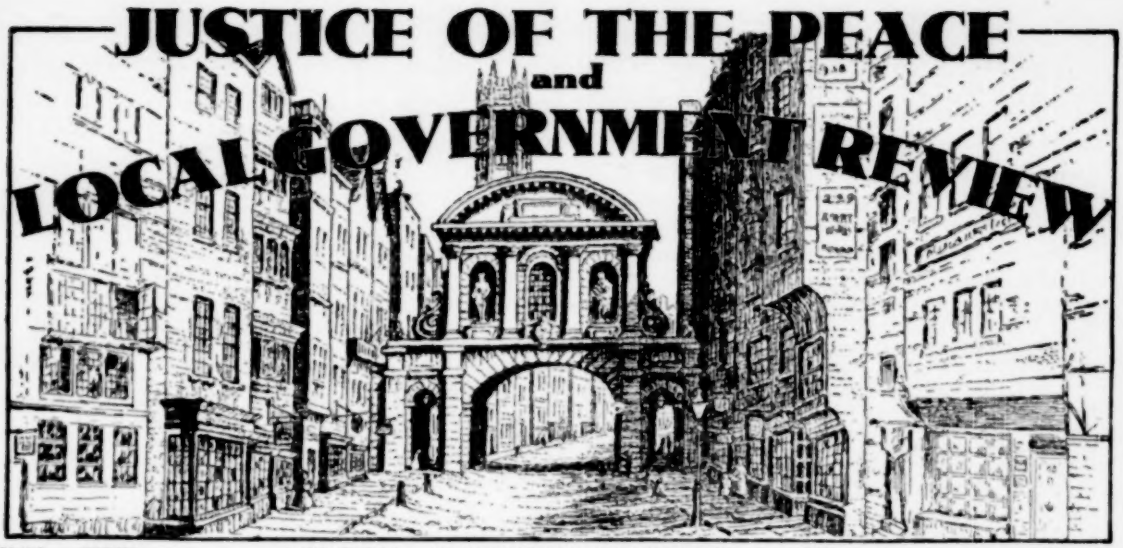

VOL. CXIV. LONDON: SATURDAY, DECEMBER 2, 1950. No. 48

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY BOROUGH OF DARLINGTON

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of full-time male probation officer, at a salary in accordance with the Probation Rules, 1949.

Applications should be sent to my office not later than December 9, 1950.

J. FENWICK MOORE,
Secretary to the Probation Committee.

10, Houndgate,
Darlington.

COUNTY OF MONMOUTH

Bedwellty Probation Area

Full-time Male Probation Officer

APPLICATIONS are invited for the above appointment. The appointment will be subject to the Probation Rules. The successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, with copies of not more than two recent testimonials, must reach the undersigned not later than December 11, 1950.

H. E. BADMINGTON,
Secretary to the Probation Committee.

Central Chambers,
Tredegar.

COUNTY OF MONMOUTH

Petty Sessional Division of Bedwellty

Appointment of Clerk to the Justices

APPLICATIONS are invited from persons duly qualified, for the appointment of full-time clerk to the justices for the petty sessional division of Bedwellty, the duties to include those of collecting officer and secretary to the probation committee.

The salary will be at the rate of £1,150 per annum rising by three annual increments of £50 to a maximum of £1,300 per annum. Office accommodation and staff will be provided, together with the necessary stationery, etc. Travelling expenses for attending the eight separate courts in the division will be allowed.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and will be terminable by three months' notice on either side.

The successful applicant will be required to pass a medical examination, and commence his duties on April 1, 1951.

Applications, stating age, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than December 11, 1950.

H. E. BADMINGTON,
Clerk to the Justices.

Central Chambers,
Tredegar.

COUNTY BOROUGH OF GATESHEAD and Gateshead County Petty Sessional Division Joint Probation Area

Appointment of Senior Probation Officer

APPLICATIONS are invited from serving probation officers (full time) for the Appointment of Senior Probation Officer (full time) for the above joint probation Area.

The appointment will be subject to the Probation Rules, 1949, and the selected candidate will be required to pass a medical examination. Reasonable expenses incurred in travelling in the course of duty will be paid, or in the event of the selected candidate owning a motor car, and its use being authorized, a motor car allowance of £84 per annum.

Applicants must have had wide experience as probation officers, and be capable of supervising the work of other officers.

Applications, stating age, present position, educational qualifications and experience, together with copies of not more than three recent testimonials, should reach Norman F. Lambert, Esq., Secretary of Gateshead County Borough Probation Committee, Town Hall, Gateshead, 8, not later than December 23, 1950.

NORMAN F. LAMBERT,
Secertary of the Gateshead County Borough Probation Committee.

CLIVE DIXON,
Secretary of the Gateshead County Petty Sessional Division Probation Committee.

BOROUGH OF ANDOVER

Appointment of Town Clerk and Clerk of the Peace

APPLICATIONS are invited for the above-mentioned whole-time appointment from solicitors having extensive experience in local government law and administration.

The salary of the appointment will be £1,000 per annum rising by annual increments of £50 to £1,200 per annum, plus £50 per annum in respect of the office of Clerk of the Peace of the Borough.

The appointment will be subject to the conditions of service contained in the Second Schedule to the Recommendations of the Joint Negotiating Committee for Town Clerks, and will be terminable by three months' notice in writing on either side.

Further particulars of the appointment and of the duties attaching to the office may be obtained from the undersigned, to whom applications, stating age, qualifications and experience, and giving the names and addresses of three persons to whom reference may be made, should be delivered not later than noon on December 11, 1950. Candidates should state whether or not they are related to any member or senior officer of the Council. Canvassing, directly or indirectly, will disqualify.

E. J. O. GARDINER,
Town Clerk.

Beech Hurst,
Andover, Hants.
November 17, 1950.

WARWICKSHIRE COUNTY COUNCIL

Junior Assistant Solicitor

APPLICATIONS are invited from admitted solicitors for the post of junior assistant solicitor in the office of the clerk of the peace and of the Warwickshire County Council. The salary of the appointment will be £635 per annum, rising by annual increments of £25 to a maximum of £760 per annum, but the commencing salary of the successful candidate will be fixed within the scale according to age and experience.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, on forms to be obtained from the Clerk of the Council, Shire Hall, Warwick, must reach the undersigned not later than December 18, 1950.

L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall,
Warwick.

BOROUGH OF HENDON

Town Clerk's Department

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of legal assistant in the town clerk's department, at a salary in accordance with the clerical division of the national scheme of conditions of service (£395 per annum × £15—£440 per annum, plus London weighting at the rate of £20 per annum between the ages of twenty-one and twenty-five, and £30 at the age of twenty-six and over).

Applicants will be required to have had experience in general legal work in a town clerk's or a solicitor's office.

The appointment will be subject to the national scheme of conditions of service, the Local Government Superannuation Act, the passing of a medical examination and, in the case of a new entrant to the local government service, to a term of probation of six months, at the end of which, subject to a satisfactory report, the officer will be transferred to the permanent staff.

Canvassing, either directly or indirectly, or submitting a testimonial from any member of the council, will be deemed a disqualification.

Applications, stating age, qualifications and experience, and the names and addresses of two persons to whom reference can be made, must be received by the undersigned not later than December 11, 1950.

LEONARD WORDEN,
Town Clerk.

Town Hall,
Hendon, N.W.4.
November 24, 1950.

SITUATION VACANT

ASSISTANT capable of taking depositions, issuing process and keeping accounts required on January 1 next in Magistrates' Clerk's Office, Town Hall, Brighton. Salary according to age and experience. Apply in own handwriting.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837]

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NOTES of the WEEK

Saving Quarter Sessions

Section 10 of the Justices of the Peace Act, 1949, preserves commissions of the peace for counties and county boroughs, and for non-county boroughs which at the end of 1948 had a separate commission of the peace and a population of 35,000 or over, or a separate commission of the peace, and a court of quarter sessions, and a population of 20,000 or over. This elaborate enactment has the demerits to be expected in a compromise. Population limits of 35,000 and 20,000 have no relation either to the amount of crime to be expected in a town or to the competence of the recorder and the magistrates.

It is true that the original proposal in the Bill, by which quarter sessions would have been confined to counties and county boroughs, can be criticized on the same lines. A small county borough away from industrial areas is unlikely to have much crime, whereas a large non-county borough on the outskirts of London or in a poverty-stricken area may have quite a lot. There was, however, this at least to be said for the Government's original proposal that, as the Lord Chancellor explained in the House of Lords (113 J.P.N. 456), it was based on status and not on population—population is a fluctuating factor, and with the process of time it becomes more and more illogical to tie anything to a past date, whereas, although status can be altered, such alterations are at any rate the act of authority.

This line of defence of the original proposal did not, however, convince the House of Lords, which was strongly influenced by professional tradition, concerned not to destroy if it could be avoided the ancient institution of borough quarter sessions. There was argument to and fro, and round about, until eventually the clause in the Bill was settled and accepted not only by the Lords but by the Commons (113 J.P.N. 738) in the shape now taken by the section, which is not very different from the original proposals of the Roche Committee (*see* the Lord Chancellor's reference at 113 J.P.N. 456), though it is more complicated.

Complication is increased by providing in s. 10 (1) (*c*) for future exceptions if at any time a borough with a population of 65,000 or more receives the grant of a separate commission, and by the power given in s. 10 (1) (*c*) and (5) to the Lord Chancellor to make orders preserving the commission of the peace and courts of quarter sessions for non-county boroughs, which had them at the end of 1948 but would lose them under the section because the population was under 20,000. The subsection applies where the Lord Chancellor is satisfied that the borough court of quarter sessions has given or is likely to be able to give assistance in the administration of justice in the county which includes the borough, and that there are sufficient historical or geographical reasons for its continuance. Assisting in the administration of justice evidently means relieving county quarter sessions of some of its burden—see the provision in the subsection about consultation by the recorder with the chairman or deputy chairman of county quarter sessions. Such an order was made on October 13, 1950 (S.I. 1950, No. 1666), preserving the position as it was before the Act in half a dozen non-county boroughs, namely Andover, Banbury, Bury St. Edmunds, Devizes, Lichfield, and Newbury. Since the power could only be exercised upon an application by the borough council within two months of December 16 last, or such further time as the Lord Chancellor might allow, we do not suppose there are further similar orders to come, and the half dozen boroughs above mentioned will therefore stand alone. This seems a pity—but perhaps we have not quite the right passion for administrative tidiness, or the proper full blooded reverence for county boroughs and large populations.

Avoiding Duplication of Process

The extension of the jurisdiction of summary courts which has been effected by s. 6 of the Married Women (Maintenance) Act, 1949, has made it easier for a married woman to pursue her claims against her husband, who has committed a matrimonial offence, in the court most convenient for her since she may now apply for process to a court for the area in which she ordinarily resides despite the fact that the cause of her complaint may have occurred in another area. On the other hand, the recent decision in *R.* v. *Sandbach JJ.* (1950) 114 J.P. 514, has upset the long established belief that in proceedings before the summary courts under the Guardianship of Infants Acts there was jurisdiction both where the person in whom the legal custody is vested is, and where the actual custody is being exercised. According to that decision such proceedings can now be brought only where the respondent is.

It has hitherto been a common practice for a married woman with children who is applying for process under the Summary Jurisdiction (Separation and Maintenance) Acts for herself, to apply at the same time for an order in respect of the children under the Guardianship of Infants Acts—either because she wishes to retain their custody throughout the whole period of infancy, or, more commonly, as a kind of insurance against the failure of her own claim for maintenance. Moreover, not infrequently—especially where the applicant is not legally represented—a summons under the Guardianship Acts is added, with the consent of the other party, during the actual hearing

of the case as soon as it becomes apparent that her claim for her own maintenance is likely to fail. It will now, of course, be necessary to scrutinize applications for process under the Guardianship Acts, bearing in mind the decision referred to above. In the case where her husband is living in another court area it will of course still be open to a married woman to pursue her remedy against her husband in the court for the area in which she lives, and subsequently, if her claim there fails or she has other reasons for obtaining an order under the Guardianship Acts, to proceed for the custody of the children under the latter Acts in the court area in which the husband is living. Such virtual duplication of process, however, is clearly expensive of time and money. It will not of course be open to a court to refuse to grant process under the Married Women Acts simply because parallel proceedings are or should be brought under the Guardianship Acts, but it will be in the applicant's own interests if such an application is carefully scrutinized, and the position fully explained to the applicant, so that she may not be put to unnecessary expense and inconvenience.

Report of the Becontree Justices

The report of the justices for the Becontree Division of Essex for the twelve months ending September 30, shows once again that this is a busy division. No fewer than 1,002 sittings were held.

Convictions for drunkenness increased substantially, but fortunately there were fewer cases of persons in charge of motor vehicles while under the influence of drink. On the subject of maintenance orders, the Chairman records his opinion that imprisonment is the only way in which men who flout the court order can be impressed, and he supports this by saying that during the year 185 committal orders were made and suspended, the result being that in most cases payment was forthcoming.

There is a somewhat unusual comment on the subject of appeals. The chairman expresses satisfaction that out of fifty-four appeals against conviction only five were allowed. Then he adds: "In eleven cases sentences were reduced, but that is purely a matter of opinion and our opinion is just as good if not better than that of the Court of Appeal which reduced them."

Obstructing the Highway

We have been invited to refer to a decision of the Divisional Court which is of importance in particular to police officers. So far as we are aware, the case has not been reported, doubtless because it involved no new principle and was largely a question of fact.

The case is *Lyons* v. *Hood* which was heard on April 28. The respondent was summoned before justices for wilfully causing an obstruction to the free passage of the highway by causing vehicles to collect thereon, contrary to s. 72 of the Highway Act, 1835. The justices dismissed the informations and the prosecutor appealed by way of Case Stated. The facts were that the respondent ran a mobile canteen from which he attracted the custom of lorry drivers who were passing. That, said the Lord Chief Justice, was not a proper use of the highway which was for the purpose of His Majesty's lieges passing and re-passing. Lord Goddard went on to refer to cases of obstruction by shop-keepers who make an exceptionally attractive display in order to cause people to assemble or who hand out articles to customers assembled on the pavement instead of serving them in the shop. In the present case the respondent was obviously using the highway for the purpose of attracting people who blocked the way of people lawfully using the highway; he must find a lay-by or some other place and must not attract his customers in such a way as to cause obstruction, as he had done. The case must go back to the justices with a direction to find the offences proved.

We understand that there have been numerous prosecutions in various parts of the country for this type of offence, sometimes under s. 72 of the Highway Act, sometimes under s. 78. This decision is therefore of interest to police officers, and of course to justices and clerks.

Hackney Carriages Engaged by Telephone

A local authority fixed a cab fare of 1*s.* 6*d.* a mile, which it considered to be on the high side, in order to compensate proprietors of cabs for empty mileage, the district being one in which, ordinarily, return passengers are scarce. They also made taximeters compulsory, with the usual byelaw requiring the driver to move his flag to the engaged position as soon as he is hired. There is an appointed stand outside the railway station, the most fruitful source of business. The council are now receiving complaints from persons who telephone to that stand for a cab to take them to the station; the driver moves his flag, in compliance with the byelaw, as soon as he leaves the cab stand, so that the customer who rides in the cab from his house to the station pays 3*s.* a mile. The council are now accordingly contending that a hiring for purposes of the fares and byelaws does not begin until the passenger steps into the vehicle.

This contention cannot in our view be supported. There is a contract of hiring as soon as the booking is accepted. This may be a few minutes, or some hours, or even some days, before the point of time at which the cab is to attend. Test the matter by ordinary law, forgetting the Town Police Clauses Act, 1847—let the vehicle be a private hire car. A requests B to let him have a car tomorrow, telling B, perhaps, that it is to take him to an important business engagement. B undertakes to do so, but defaults. A clearly has a right of action: in other words, the booking gave rise to a contract. The same facts give rise to a contract, none the less enforceable at common law as well as under the Act of 1847, if A orders a hackney carriage. At the moment of booking, there may not be a carriage appropriated to the contract, but, as soon as a cab sets out from the garage or the cab rank to fulfil the contract, that cab is "hired" within the meaning of the Act of 1847 and the ordinary byelaws: *Hawkins* v. *Edwards* (1901) 65 J.P. 423. The proprietor or driver is not obliged to charge the full fare: s. 54 of the Act of 1847, but, if he does, the passenger must accept the position that that fare will be calculated by the method of moving the flag, from the moment when the vehicle has come upon the streets in the character of a hired vehicle. Here again, a simple test can be applied: if the intending passenger instead of telephoning had sent his servant into the street or to the cab rank, with instructions to find, engage, and return with a cab, nobody would doubt the driver's obligation to lower the flag as soon as the servant stepped into the vehicle. If the passenger wished to escape paying for so much of the mileage as was traversed before he personally entered the vehicle, he could have telephoned to a garage nearer to his home, or he could have stipulated in advance for a lower charge. The whole point of having fares fixed by local authorities is to protect persons who, hiring vehicles in the street, are not in a position to protect themselves. If a householder chooses, instead of seeking a vehicle from some other source, to take a vehicle off the street, thus depriving persons in the street (in the case put to us, passengers arriving by train) of a facility, he has no grievance by reason of having to pay for the empty mileage from the cab rank to his house.

THAT PREVIOUS CONVICTION AGAIN

By J. N. MARTIN

From time to time in every court of summary jurisdiction the problem arises of the correct procedure in cases which are brought within the ambit of s. 17 of the Summary Jurisdiction Act, 1879, only in the case of a second or subsequent conviction.

The problem has recently been the subject of a "Practical Point" (No. 7 at p. 545, *ante*), and while the writer respectfully agrees with the comment that there is "no wholly satisfactory answer," it is thought that some advantage may be gained from setting out the various aspects of the problem more fully than can be done within the compass of a reply to a query.

First, disregarding for a moment the objections to a disclosure of previous convictions before the trial, it is obvious that if there is a specific allegation of the previous conviction in the information, there is no problem at all. It will be convenient, therefore, to set out the arguments in favour of such a course.

In the case of *R.* v. *Beesby* (1909) 73 J.P. 234, there are several references to the fact that the previous conviction was not charged in the information, but there is no indication that the court thought that it would have been wrong so to charge it. This was despite the specific contention by counsel that the fact that it was not so charged was one of the reasons for not informing the defendant of her right to trial by jury, and the rejoinder of the appellant's counsel merely that it was "not necessary" that the previous conviction should be so charged. It does appear that here was an opportunity for a judicial pronouncement upon the point which would hardly have been let pass by the court if the court had taken the view that it would have been wrong to disclose the previous offence. It is true that such a pronouncement would have been *obiter*, but the court has never on that account been reluctant to correct what it considers an obvious error.

A further consideration is that some forms of information prescribed in *Oke's Magisterial Formulist*—*e.g.*, that for the offence of night poaching—provide for the disclosure of the fact that there has been a previous conviction. This is of course not in any way conclusive, but is of considerable weight, because these forms must have been used in the courts over and over again, raising a presumption from the fact that they do not appear ever to have been successfully challenged that there is nothing wrong with them. It is, however, only right to say that there are other forms of information in the same volume for offences in which the question now being discussed arises—such as that for keeping a brothel—in which there is no such provision.

There is another argument in favour of alleging the previous conviction in the information. Although it is assumed by the court in *R.* v. *Beesby* that it would have been proper for the justices, having found the defendant guilty, to have committed her for trial (assuming that she elected to go) when they heard about the previous conviction, the case was decided before *R.* v. *Sheridan* and *R.* v. *Grant* (1936) 100 J.P. 319/324. It does seem fantastic to suggest that a defendant may elect trial by jury and then plead *autrefois convict* before the court of trial, but on the other hand there seems little doubt that a finding on the facts of the case, sufficiently conclusive to enable the justices to hear about previous convictions without the possibility of their verdict being influenced by such knowledge, would be held to be a conviction for the purpose of a plea of *autrefois convict*. The device which the judgment in the case of *R.* v. *Beesby* seems to suggest, of a finding on the facts of the case, followed by an inquiry about previous character before actually convicting, is, it is submitted, not open to justices now in view of the expressions used in the judgment of the court in *R.* v. *Sheridan*. A finding on the facts of the case justifying an inquiry about character is a finding of guilt and it is clear from the last mentioned judgment that such a finding of guilt is a conviction for the purposes of the plea.

Against the practice the strongest possible argument is that not only may a defendant feel that the justices are prejudiced against him, but the justices themselves may feel that the exercise of their judgment is impaired. The criticism of the practice on these grounds is substantially more potent than that which was directed against the hearing of previous convictions in indictable cases triable summarily before the alteration of procedure brought about by the Criminal Justice Act, 1948. In such cases not only could the defendant elect trial by jury if he was not satisfied, but the justices themselves, if they felt unable to remain uninfluenced by the knowledge they had gained, could refuse to deal with the case. In the cases now being discussed it is true that the defendant may make sure (or nearly sure) of an unbiased tribunal by exercising his option, but if he does not do so, the justices are bound to deal with him however incompetent they may feel themselves to be. This is even more unsatisfactory than it sounds when one remembers, as is quite well known to all who have frequent contact with courts of summary jurisdiction, that to the average defendant the prospect of "getting the case over," the avoidance of further uncertainty, expense and loss of time, and so on, are over-riding considerations which will induce him to consent to the justices' jurisdiction even if he is not in his mind really satisfied that their judgment will not be prejudiced. Notwithstanding the point mentioned above, that there was undoubtedly less objection to the hearing of the "character and antecedents" of the accused in indictable cases, Parliament has seen fit to alter the law so as to take away the power to do this. It follows *a fortiori* that if the law is capable of interpretation so as to avoid hearing previous convictions at the outset of the cases now being considered, it ought to be interpreted in that way.

This argument is strengthened by the fact that the procedure upon trial by jury specifically excludes the giving of evidence of previous convictions until the prisoner has been found guilty of the latest offence. Against this it may be argued that it will be obvious to anyone knowing the law, from the very fact that the case is being tried by a jury, that there has been at least one previous conviction, because if there had not been the justices had no power to commit for trial. The supporters of the practice of disclosing the previous convictions, will no doubt admit that very few jurymen will actually be affected in this way, but argue that because an accused person can never be sure that none of the jury knows the law—which after all everyone is presumed to know—the procedure is no better with regard to "justice appearing to be done" than if the justices deal with the case after hearing that there is a previous conviction. It must be admitted that there is something in this.

A discussion of the matter is not complete without a reference to the device put forward in the "Practical Point" referred to above—not, indeed, as a suggestion, but as a statement of what is done in some courts. It is said that some courts tell the defendant that in certain circumstances he has a right to claim trial by jury, and does he wish to exercise this right if he

has it? In *R.* v. *Beesby* counsel said that the form of warning which the justices ought to give is "If you have been previously convicted you are charged with an offence in respect of which you have a right to be tried by a jury." The judgments, however, show that this contention was not accepted by the court, and it is submitted by the writer that very little consideration will suffice to show that such a form of procedure would not merely fail to achieve the desired object and possibly cause confusion all round, but might even be productive of a less satisfactory state of affairs than that which it seeks to avoid. The defendant may say "I will be tried by a jury if I am entitled to be so tried." If he does, the justices are in the same position as if the caution had not been given; the case will have to be dealt with as a first offence and the problem will arise after the conviction. The defendant may say "I will be dealt with summarily," meaning either "I must be dealt with summarily because there are no previous convictions," or "Although there are previous convictions I consent to being dealt with summarily," and the whole point of this procedure is that the justices do not know which is the true version. The defendant, however, may dispute, not only the facts of the case, but the fact that he has been previously convicted. He is entitled to require the prosecution to prove the previous conviction, but if some form of "hypothetical caution" is to be allowed he has to abandon this right as the price of exercising his right to trial by jury. There is a possibility of an even greater mischief than that. If he says "I wish to be tried by a jury" he is saying, in effect, "I have been previously convicted." Before committing him for trial the justices will have to receive information about the previous conviction, and they may find that it is not one which affects the maximum punishment after all. They will then be in the unhappy plight of knowing about the previous conviction and being unable to divest themselves of their duty to adjudicate however much both they and the defendant wish to achieve this object. It is felt that enough has been said to show at least that this is not at all a satisfactory solution. Jelf, J., in *R.* v. *Beesby* said that: "it is impossible in practice."

After a full consideration of all these points, the following solution is put forward, not without a good deal of diffidence. It is true that, as stated above, a conclusion reached upon the evidence that the defendant did the act complained of is a conviction for the purposes of a plea of *autrefois convict*, but it is possible to argue that the case can be distinguished from *R.* v. *Sheridan* in that it is a conviction of a different offence from the more serious offence of doing the same act after a previous conviction; and that accordingly the justices may treat the conviction as a nullity because, owing to the existence of the previous conviction, the real offence was the more serious offence, and they never had jurisdiction to deal with it. The defendant will then be formally charged with the offence in a form alleging the existence of the previous conviction, and the caution administered. If the defendant elects trial by jury the evidence will have to be called all over again for the purpose of taking depositions. If he consents to summary trial, no doubt strictly speaking the case ought to be begun again *de novo*, but it is suggested with some confidence that if the defendant agrees (as he usually will) there would be no objection to treating the evidence already given as applying to the new charge. In the writer's view it can be said that there is statutory authority for, or at least statutory recognition of, this procedure. Section 23 (1) of the Road Traffic Act, 1934 (the section which authorizes the substitution of a charge of careless driving for a charge of dangerous driving), refers to the "cross-examination of a witness whose evidence has already been given"; there is no specific authority for the application to the new charge of evidence given on the old one, but the use of the expression quoted can only mean the recognition of the correctness of such a course.

It is realized that the critics of the suggested procedure will say that to distinguish *R.* v. *Sheridan* in this way is a distinction without a difference; that there are not two offences, but one offence with two different punishments, and that the absurd result which flows from this view, of the defendant being able to say to the justices "You must send me to quarter sessions because of *R.* v. *Beesby*" and then to the quarter sessions "My plea of *autrefois convict* must succeed because of *R.* v. *Sheridan*," is really the outcome of the failure to adopt the only proper course, that of charging the previous conviction in the information.

However, as pointed out at the beginning of this article, while it is only by inference—albeit a fairly strong inference—that it can be said that *R.* v. *Beesby* does not disapprove the charging of the previous offence in the information, it can be said with very much more weight that that case does not disapprove the practice of not so charging it. Fortified by this consideration, it is submitted that it is better to run a slight risk of being wrong in law on what is admittedly a difficult question than to follow a course which even if it is right in law—and this is by no means certain—is bound to lead to injustice.

RECENT CASES ON THE MOTOR VEHICLES (CONSTRUCTION AND USE) REGULATIONS, 1947

By GEORGE C. YORKE, *Assistant Solicitor, Norfolk County Council*

The Divisional Court has recently decided two cases on the Motor Vehicles (Construction and Use) Regulations, 1947, each of which was an appeal by way of Case Stated from the decision of a Norfolk bench of magistrates.

Before describing the two cases, it might be helpful to say a few words about the regulations themselves. The regulations were made by the Minister of Transport under s. 30 of the Road Traffic Act, 1930, and form a comprehensive code prescribing conditions with which the various types of "motor vehicles" and "trailers" must comply. The regulations deal with such matters as maximum dimensions and weight, efficiency of springs, brakes and mirrors, nature of tyres, use of "T" marks on trailers and use of speed limit disks. There are exemptions in favour of vehicles registered before the regulations or their predecessors came into force and also in favour of special classes of vehicles, *e.g.*, farm implements, mobile cranes and vehicles proceeding to a port for export. Certain other vehicles also partly escape the meshes of the regulations because s. 3 (1) (*b*) of the Act allows the Minister, by order, to "authorize, subject to such restrictions and conditions as may be specified in the order, the use on roads of . . . special types of motor vehicles or trailers . . ." notwithstanding that such vehicles do not comply with the 1947 regulations and four such orders are now in force. The most important of these four orders is the Motor Vehicles (Authorization of Special Types) General Order, 1941.

It will be seen from the above that both the 1947 regulations and the Special Types Orders only apply to :

(1) " Motor vehicles," which are defined by s. 1 of the Act as " all mechanically propelled vehicles intended or adapted for use on roads " and

(2) " Trailers," which are defined as " vehicles drawn by motor vehicles." Nowhere is the word " vehicle " defined.

The case *Garner* v. *Burr* [1950] 2 All E.R. 683, concerned a poultry hut fitted with four ordinary iron bogey wheels about 1 ft. in diameter. The defendant was, with a Ferguson tractor, towing this contraption along a public road to a sale-yard where it was to be sold. The poultry hut was empty at the time. The defendant was charged under s. 3 (1) and (2) of the 1930 Act with using on a road a trailer which did not comply with the 1947 Regulations in that it exceeded the maximum width allowed, it had no brakes nor rubber tyres and there was no " T " mark at the rear. The defendant pleaded that :

(1) A poultry hut on wheels is not a vehicle and, therefore, cannot be a trailer as statutorily defined.

(2) Even if it is a vehicle it is a " land implement " and, therefore, exempt from the relevant provisions of the regulations. " Land implement " is defined by the regulations as " any implement or machinery used with a land locomotive or a land tractor in connexion with agriculture grass-cutting, forestry, land levelling, dredging or similar operations and includes a living van and a trailer which, for the time being, carries only the necessary gear or equipment of the land locomotive or land tractor which draws it."

The justices accepted both of the defendant's arguments and dismissed the case, but the Divisional Court reversed the justices' decision. In the course of his judgment the Lord Chief Justice said : " among other things it is just as well to bear in mind that the regulations are designed for a variety of reasons, among them the protection of road surfaces. This was a vehicle which had ordinary iron wheels not pneumatic tyres and, therefore, of course, it is liable to damage the roads. I think the Act clearly is aimed at anything which will run on wheels which is being drawn by a tractor or another motor vehicle " despite the fact that the dictionary definition of " vehicle " does not, perhaps, include a poultry hut on wheels.

Dealing with the defendant's second argument, Lord Goddard said : " this is not an implement or machinery used in connexion with agriculture. It is not an implement or machinery within the meaning of that definition. I think that definition is designed to deal with such things as reapers or binders as they are generally called or rakes or harrows which one sees every day in use on a farm."

In the unreported case of *Newstead* v. *Hearn* [1950], the defendant had loaded a bulldozer on to a " low-loader " lorry and was driving the lorry along a public road at dusk. The detachable blade of the bulldozer was still in position and projected no less than 3 ft. 6 inches. from the offside of the lorry. An oncoming car stopped and drew in as far as possible on to the grass verge but the lorry proceeded slowly and the blade of the bulldozer ripped the side off the car. The defendant was charged under reg. 67 of the 1947 regulations, the relevant parts of which read as follows :

" Every motor vehicle . . . and the . . . packing and adjustment of the load of such vehicle . . . shall at all times be such that no danger is caused or is likely to be caused to any person . . . on a road."

The justices convicted the defendant and the Divisional Court upheld the justices' decision.

The case is chiefly interesting as illustrating a useful alternative to a charge of dangerous driving or of driving without reasonable consideration for other road users. The defendant relied on the Motor Vehicles (Authorization of Special Types) General Order, 1941, which exempts vehicles carrying abnormal indivisible loads from some of the requirements of the 1947 regulations. The defence was of no avail because such vehicles must still comply with reg. 67 and, since the blade of the bulldozer was detachable, the load was not indivisible.

THE RENT CONTROL ACT, 1946

FRESH LIGHT UPON A LONG-STANDING PROBLEM

By L. G. H. HORTON-SMITH, *Barrister-at-Law*

The Furnished Houses (Rent Control) Act, 1946, has given rise to many problems, and, as readers of the *Justice of the Peace* have long since known, to many an error, alike of law and of fact, on the part of rent control tribunals established under it.

One problem, however, has long persisted, in regard whereto tribunals have taken differing views ; and that, from the very start.

The matter first came to public notice in the form of a question: " Can a tenant withdraw his reference before the hearing ? " This was the third question on the " Agenda " for discussion at the meeting of the thirteen tribunals first established under the Act and called for November, 1946. This was a futile question, as will hereinafter be seen.

THE PROBLEM : SECTION 2 (2)

The problem is not *whether*, but *when*, a tenant can withdraw his reference without being too late so to do ? This is the real problem, and I think that the recent case in the High Court, to which I will refer at the close, assists greatly to its solution.

The material part of the Act is s. 2 (2) which opens : " Where any contract to which this Act applies is referred to a tribunal, then, *unless at any time before the tribunal have entered upon consideration of the reference it is withdrawn by the person or authority by whom it was made, the tribunal shall consider it and* " etc.

The really difficult question lies in the words " *before the tribunal have entered upon consideration of the reference.*" What constitutes such " consideration " ?

Let us see, at the outset, how tribunals have differed in their interpretation of these words—and I will content myself with a recall of the early cases wherein those differences commenced to show themselves : differences which, unhappily, have throughout persisted. I will confine myself to ten illustrations, inclusive of official statements numbering them in their respective order of date.

DIFFERING VIEWS OF TRIBUNALS FROM THE OUTSET

Number 1.—In a case in August, 1946, not reported but which

came within my own knowledge, the tribunal found itself faced with a tenant who just before the hearing signified to the tribunal his withdrawal of his reference, as the result of some last minute talks with his landlord. The tribunal decided that in such circumstances they—not having as yet "entered upon consideration of the reference"—could not hear the case; whereupon the tenant changed his mind and withdrew his withdrawal, thereby placing the tribunal in a position to hear his reference. Thereupon—and only thereupon—did the tribunal consent to hear the reference. Nothing could have been more correct.

Number 2.—In a case reported in the *Evening Standard* of October 23, 1946, a tribunal refused to allow the tenants to withdraw their reference wherein they sought a reduction of the rent which they were paying, stating that the case would proceed because, "though" the tenants "withdrew their reference at the last moment," the tribunal "want to carry on the case, as they consider it a bad example of an extortionate charge," and adding "we want to protect future tenants."

Whether such withdrawal was as a result of a last minute settlement between the parties on terms acceptable to the tenants, was not stated. But, whether that was so or not, whence had the tribunal any authority to proceed as and on the grounds stated? However understandable the tribunal's reason for such procedure may seem, the answer to that crucial question must depend upon the provisions of the Act itself, already above set forth and hereinafter more particularly dealt with. Moreover, *non constat* that on any future letting, the same or the same amount of furniture and/or services would be provided. (*See* further below, under numbers 7 and 8).

Number 3.—In a case reported in the *Evening Standard* of October 24, 1946, it was stated that—notwithstanding the fact that the tenant "agreed that she had tried to withdraw the case, because the landlord had offered to reduce the rent"—the tribunal reduced her rent and gave her, as the expression goes—though technically it is an inaccurate expression, for it is the Act itself, and not the tribunal, which gives it in the cases to which its s. 5 applies—the maximum security of tenure of three months.

This would appear to mean that the tenant had not been allowed by the tribunal to withdraw her reference. If it does not mean that, it is impossible to say what it does mean.

Number 4.—In a case reported in the *Evening News* of November 13, 1946, the chairman of a tribunal said that "he understood it was now becoming a practice of certain landlords to reduce rents when a case was to be heard by a tribunal" and "warned tenants that that reduction had no legal binding."

If all that he thereby meant was that such reduction, so agreed between the landlord and the tenant themselves—instead of its being a reduction fixed by the tribunal—would not prevent the landlord from later increasing the rent again without committing an act made illegal by s. 4 (1), he was right. But only so. (*See*, further, Number 9 below).

Number 5.—Official statement. In *The Times* of November 13, 1946, it was stated that: "more than 2,000 cases had been referred to rent tribunals in England by October 31 . . . . *Some cases were settled amicably and withdrawn* . . . and rent reductions were made in 615 out of 743 cases heard and decided by tribunals."

This would seem to mean that "the cases settled amicably and withdrawn" were—at least in the main—not heard by the tribunals. (*See*, further, Numbers 6 and 10 below).

Number 6.—Public statement. In the *Evening Standard* of November 19, 1946, it was reported that "more than thirty cases will come before" a certain "Rent Tribunal at its first sitting . . . Other cases have been settled out of court by landlords accepting reduced rents."

As to these latter the observation already made above under No. 5 would seem equally to apply: perhaps, indeed, more so.

Number 7.—In a case reported in the *Justice of the Peace*, of December 21, 1946 (and further referred to in its issue of January 11, 1947), a sub-tenant had referred to a tribunal his contract of tenancy of a downstairs front room, furnished and serviced, seeking a reduction of the rent which he was paying. It transpired that his landlord was himself a tenant of the local corporation with no right to sublet without permission. The corporation, on learning of his breach of contract, removed the sub-tenant elsewhither, and, upon the reference coming on for hearing, its representative produced a written request from him for his reference to be withdrawn on the ground that, his contract having been determined, he had no further interest in the matter. The tribunal, however, stating that they had already "entered upon consideration of the reference" and that a withdrawal was then too late, heard the reference, reduced the rent for that room, and stated that "the rent to be charged to any future tenant, for accommodation and services as before," would be such reduced rent.

True, that, once the case had been called on, they could strictly be considered to "have entered upon consideration of the reference," within s. 2 (2); but that did not necessitate their hearing it, for by s. 2 (2) they had the power either to "consider" it *or* to dismiss it.

In acting as they did, they were, as it seems to me, deciding in advance what they would more properly have left to a decision on a reference to them by some future tenant; but at least they safeguarded themselves by the assumption that the provision of furniture and services would be the same on such future tenancy, which cannot be said of either number 2 above or number 8 below.

Number 8.—In a case reported in the *Justice of the Peace* of December 21, 1946 (and further referred to in its issue of January 11, 1947), a tenant of a furnished and serviced bedroom and sitting-room referred his contract of tenancy after being served with a notice to quit but before such notice had expired. Subsequently he had decided to abide by such notice and, leaving the premises accordingly, he had, for some time before the hearing, been residing elsewhere. There was no suggestion that he still wanted the premises. The tribunal, nevertheless, decided to hear the reference, apparently on the ground that they had already "entered upon the consideration" of it, though it was not stated when they so entered upon such consideration. They decided "that the rent payable by any future tenant be fixed at" a reduced figure.

Whether or not the tribunal had actually received from the tenant a notice of withdrawal prior to the hearing does not appear to have been stated;—but in other respects the tribunal's action seems open to the same comments as under the preceding number 7, save that the tribunal in this case did not safeguard themselves as had the tribunal in such preceding case.

Number 9.—In a case reported in the *Evening Standard* of December 24, 1946, a tenant, applying for a reduction of his rent, stated that "when his landlady heard that he was going to the tribunal, she reduced his rent from 18*s.* to 15*s.* a week"; but the tribunal "further reduced the rent to 10*s.* a week."

The Chairman, referring to what he called "the growing practice by landladies of reducing the rent of their tenants when they know that they" (the tenants) "have applied to the rent tribunal," is stated to have said in such regard: "It should be known that such action on the part of landladies is not binding legally in any way": much the same as said the Chairman in number 4 above.

In the case here in question the tenant had obviously not agreed to the landlady's reduction, and therefore, of course, it was not legally binding upon him. But, if he had agreed thereto and had duly and betimes withdrawn his reference accordingly, the reduced rent would clearly have been legally binding on both her and him for whatever the period mutually agreed to be covered by such reduction. (*See*, further, under number 4 above).

Number 10.—Official statement. Finally, let me quote what appears to have been an official statement. Appearing in the *Evening Standard* on January 10, 1947, as from its own reporter—and under the heading " Cut Rent Pleas—15 *per cent.* Failed,"—it ran as follows : " Rent restrictions have been ordered in about 85 *per cent.* of the cases heard by Britain's seventy rent tribunals since June up to December 31, said a Ministry of Health spokesman today. ' Although up to the beginning of December the tribunals had 3,596 cases referred to them, *nearly 2,250 cases were withdrawn* ' (my italics), ' and, of 1,350 cases considered, the rents were cut in 1,113 cases,' the official told me."

Such official of the Ministry would seem, thus, to have evinced no surprise at the withdrawal of references nor to have suggested that tenants had no right or power to withdraw their references. The inference seems obvious ; and here again I would refer to what I have written under numbers 5 and 6 above.

There I can safely leave illustrations : there is no point in giving more.

THE PROBLEM FURTHER CONSIDERED

We have seen already that the question originally asked in October, 1946, finds its clear answer in s. 2 (2) of the Act which expressly contemplates withdrawals of references. If that be insufficient to convince every reader of the Act, let me add that it finds itself implemented by s. 5 which deals with references which have been withdrawn and enacts, by its proviso (*b*), that in such cases the period of protection (*i.e.*, security of tenure) shall end on the expiration of seven days from such withdrawal. As I wrote in my article in the *Justice of the Peace* of October 26, 1946 : What more can the doubters want ?

To my mind, tribunals which have incorrectly refused to allow references to be withdrawn would seem to have assumed the powers of a Criminal Court. Such a court of course—as everyone knows—has the power to prevent the withdrawal of a prosecution or the acceptance by the prosecution of a plea to a minor count instead of persisting with a major count. But in matters of civil law, what court of law has the right to prevent the parties from settling their differences upon any terms mutually acceptable to themselves. Save in cases of damages for certain classes of injury, I know of none. And rent tribunals are not a court of law. If anyone thought otherwise, he has now been amply undeceived by the judgment of Lord Goddard, C.J., in the recent case of *Marine Parade Estates (Brighton)*, decided in the High Court on March 29, 1950, and reported in *The Times* of the following day.

In regard to what tribunals should do in cases of withdrawals, it has always seemed to me that two questions required and require to be answered.

TWO QUESTIONS

The first question must obviously be this : *Have the tribunal entered upon their consideration prior to such withdrawal ?* If they have, they can go ahead and consider the reference, but not otherwise.

In many cases—especially in the early operation of the Act—there had been no such consideration by the tribunal prior to the date fixed for the hearing of the reference, and, in consequence, no right whatever to hear the reference if already by then it had been withdrawn.

In " *A Six Months' Retrospect* " on the working of this Act, published by the Justice of the Peace, Ltd., at the close of March, 1947, I suggested that—as a *way out of this impasse*—tribunals might meet and consider the contents of the document constituting the tenant's reference before serving the landlord with the written notice—prescribed by s. 2 (1) of the Act and by sch. 1 to the Regulations (S.R. & O. 1946, No. 781) made by the Minister of Health under its s. 8—setting forth the information which they require in respect of the contract of tenancy in question. They may then, as it seemed to me, be properly regarded as having " entered upon consideration of the reference," in which case a withdrawal of the reference would be too late.

But the matter does not rest there ; for a second and no less important question arises.

This second question is : *What attitude should a tribunal take in the case of the withdrawal of a reference by the person or authority by whom it was made* " ?

As to this, one would have thought that " in all the circumstances "—s. 2 (2)—a tribunal would regard it as their proper course not to " consider " the reference but to exercise their alternative power under s. 2 (2) and " dismiss the reference." And particularly so, indeed, where no contract of tenancy any longer exists at the date fixed for the hearing and where it cannot be foretold what may be the position as to the provision either of furniture or of services under any future contract of tenancy of the premises in question.

THE RECENT HIGH COURT CASE

And now we come to the very latest case ; one which has, happily, been taken to the High Court. It is *Rex* v. *Wanstead and Woodford Rent Tribunal : ex parte Clarke*, heard before Lord Goddard, C.J., and Byrne and Finnemore, JJ., on July 26, 1950, reported in *The Times* of the following day.

In this case Clarke of Hermon Hill, Wanstead, London, E., applied for an order of *certiorari* to bring up and quash an order made by the said tribunal.

The facts can be shortly stated. Clarke had received one Buick into his house by way of kindness, as a tenant. At some later date (unspecified) Clarke had given Buick a notice to quit, during the continuance of which Buick on February 20, 1950, referred his contract of tenancy to the tribunal. But on February 26, 1950—by which time such notice to quit had expired—Buick, with a view to coming to terms with Clarke as to staying on at the house, *withdrew his reference to the tribunal*, as (*per* the Lord Chief Justice) " under the rules ", *i.e.*, presumably, s. 2 (2) of the Act, " he was entitled to withdraw it."

On the following day, February, 27, 1950, however, the tribunal informed Clarke that they had fixed March 7, 1950, for the hearing and for inspection of the house in question ; and on the arrival of that day, and some two hours before the time fixed for the hearing, the three members of the tribunal, and their clerk, went to the house ; and when Clarke told them that the reference had been withdrawn, *the Chairman of the Tribunal replied that it could not be withdrawn without their consent and this they refused to give because the withdrawal was too late.*

Though neither Buick nor his family were at home, they nevertheless insisted on seeing his rooms and ordered Clarke to attend the hearing and to produce then his gas and electricity accounts before them.

Clarke attended the hearing with witnesses and gave the figures demanded whereupon the tribunal immediately announced their decision reducing the rent and giving (note here again the frequent but incorrect expression) to the tenant three months' security of tenure.

High handed, if you will;—and coming doubtless from a tribunal which had in mind but yet had misunderstood what Lord Goddard, C.J., had long since stated in the *Kendal Hotels Case* [1947] 1 All E.R. 448 at p. 450 that "Parliament" had "chosen to make them," *i.e.*, rent tribunals, "the absolute masters of the situation."

To anyone in the least conversant with the Act, it would have been obvious at once that the order as to three month's security of tenure for Buick was completely unfounded; for the notice to quit had been given before and not after the making of the reference. *See* s. 5. But that does not concern us here.

Nor need we here be concerned with the "trespass" on Clarke's premises, a trespass in that (*per* the Lord Chief Justice) "they invaded his house when they had no right so to do."

What, however, we are concerned with here is what his Lordship said on the subject matter here in question. "When," said he, "a tribunal acted in complete defiance of the Act and the rules it was a serious matter" (or *per* the reports in the *Evening Standard of* July 26 and the *Daily Mail* of July 27, "a very serious matter"); and this quite apart from their illegal invasion of Clarke's premises. "He was glad to hear that the Ministry, which had taken the matter up, did not pretend that they could support the high-handed action of the tribunal in entering Clark's house and *in refusing to allow the tenant to withdraw the case after he had given notice to that effect.*"

An order of *certiorari* accordingly issued, and, further, the Court ordered the members of the tribunal to pay the costs. Those costs were stated in the report in the *Daily Mail* of July 27 to have amounted to "several hundred pounds", which must I think have been an over-estimate; and according to the same report the Ministry of Health lawyers were to meet that day and decide whether the members of the tribunal should pay the costs out of their own pockets. Let us devoutly hope that—as a salutary lesson to all tribunals—those lawyers answered that question in the affirmative.

Whether they so did or not, we know from the *Daily Express* and *The Times* of August 10 that the chairman of the tribunal in question complained to the Ministry that information which the tribunal had supplied to the Ministry had not been placed before the Court; and that the Ministry replied saying that it had "no desire whatever for the tribunal to resign." The Ministry (*per The Times*) admitted that information supplied to it had not been placed before the Court. As to this, one can but suppose such information to have been irrelevant.

BACK TO BEDROCK FOR SOLUTION

Let us now return—not to the futile question originally asked in November, 1946, with which I dealt at the outset, but—to the question with which we are mainly here concerned, namely: *How late in point of time can a tenant withdraw his reference?* As already shown, the statutory answer to that is given by s. 2 (2) itself. He can withdraw it "at any time before the tribunal have entered upon consideration of the reference." So back we come to what is really the *crucial question*, namely: *What constitutes "consideration of the reference" and when can it be said to commence?*

Underlying the recent above-cited case in the High Court must be the fact, *either* that the tribunal did not avail themselves of their right under s. 2 (1), upon their receipt of the reference, to serve upon Clarke a written notice requiring him to give them the particulars within the scope of sch. 1 to the rules under the Act (S.R. & O. 1946, No. 781) which they desired from him in relation to the contract of tenancy, *or* that they served upon him such a notice without any "consideration" whatsoever of the terms of the reference itself. Probably the former.

In either case the tribunal were bound to abide by Buick's withdrawal of his reference and had no right whatsoever to refuse to accept that withdrawal and then proceed to hear the reference. The court had no option but to issue the order of *certiorari* quashing the tribunal's order. Well may we say: *Caveant igitur omnes alii.*

In the result, I adhere to the suggestion which—*as a way out of the impasse*—I made (as above recorded) in 1947; and I adhere to it the more assuredly in that I now find myself fortified by the views of Mr. Harry Samuels and Mr. Robert Chope in their work on "Rent Tribunals" (London: Stevens & Sons, Ltd.), 1949, at page 65, where they state as follows: "The Act does not define at what point a tribunal is to be deemed to 'have entered upon consideration of a reference.' But the tribunal's first duty after the reference is made is to "consider" it and in the second place to make such inquiry as it thinks fit as a preliminary to giving its decision. It would appear, therefore, that the tribunal enters upon consideration of a reference at the time it carries out its primary duty of 'considering' the reference after it has been received."

The phraseology is much the same as mine of three years ago and adequately represents my view.

Supposing, however, that the tribunal have not acted under s. 2 (1); for, though empowered so to do, they need not: s. 2 (1) only says "they *may*." Even so, however, it would seem that, if in connexion with the reference they inspect the relevant premises at any time prior to that fixed for the hearing, they cannot fail to be deemed, at least then, to have entered upon its consideration within the meaning of s. 2 (2).

One closing observation in this regard. It might be thought by some that the words "have entered upon *consideration* of the reference" and "shall *consider* it" are synonymous with "have *entertained* the reference" and "shall *entertain* it." But that cannot be so; else Parliament could have used the latter expressions which in fact find themselves, in another tense, in s. 2 (6) entitling tribunals "not to *entertain* a reference" in the circumstances therein specifically set forth.

Finally I may add that—whether or not a tribunal has yet "entered upon consideration of the reference"—I still adhere to my further view, expressed in March, 1947, and above recorded, that, if in fact a tenant withdraws his reference before the actual hearing, the wise and proper course for a tribunal to take is, for the reasons then given, to act under the alternative power given to them by s. 2 (2) itself, namely to "dismiss the reference."

NEW COMMISSIONS

WAKEFIELD BOROUGH

Hubert Williamson Laidlaw, 1, Crown Court, Wakefield, Yorks.
John Richard Rylands, Milnthorpe Green, Wakefield.
Frank Averell Spencer, Silcoates School, near Wakefield.
Harry Stokes, 30, Walton Lane, Soudal, Wakefield, Yorks.

WOLVERHAMPTON BOROUGH

Frank Clapham, 21, Beech Road, Oxley, Wolverhampton.
Mrs. Ida May Hayes, 37, Dunstall Hill Road, Wolverhampton.
John Todd Lewis, O.B.E., Stone House, Tettenhall Wood, near Wolverhampton.
Leslie Donald Thornton, 18 Oaks Crescent, Wolverhampton.
Arthur White, The Orchard, Compton, Staffs.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Somervell and Denning, L.JJ., and Lloyd-Jacob, J.)

November 14, 1950

COCHRANE v. CHANCTONBURY RURAL DISTRICT COUNCIL

Housing—Insanitary house—Notice to execute work—Appeal to county court—Part of work necessary and reasonable—Power of court to quash whole notice—Housing Act, 1936 (26 *Geo. 5 and 1 Edw. 8, c. 51*), *ss. 9 (1), 15 (2).*

APPEAL from Brighton County Court.

On May 4, 1950, the Chanctonbury Rural District Council served the owner of a working-class dwelling-house with a notice under s. 9 (1) of the Housing Act, 1936, requiring her to execute certain works in relation to the house on the ground that it was unfit for habitation. The owner appealed to the county court under s. 15 (1) of the Act on the ground that the works required to be executed were unnecessary and unreasonable having regard to the age and character of the premises. At the hearing the owner admitted that some of the work was necessary and reasonable and said that it would be carried out. The council did not ask the county court judge to vary the notice having regard to the admissions of the respondent, and the owner's appeal was allowed and the notice quashed *in toto*. On appeal by the council to the Court of Appeal,

Held, (i) as no submission had been made to the county court judge that, as a matter of law, the notice should not be quashed in respect of items of work which the owner was prepared to do, the point could not be taken in the Court of Appeal.

(ii) assuming the point could be taken, the county court judge had power under s. 15 (2) (*a*) of the Act to vary the notice and to confirm it in respect only of the admitted items, but he was not bound to do so and, if he thought fit, he could quash the notice as a whole.

(iii) if a local authority required work to be done which was excessive, the county court judge was not bound to amend the notice so as to specify less work which would make the notice good. He might, if he thought fit, quash the notice, and leave the local authority to serve a fresh notice specifying more limited work.

Appeal dismissed.

Counsel: *Scott Henderson*, K.C., and *H. B. Grant* for the council; *R. M. Bell* for the owner.

Solicitors: *Chalton Hubbard & Co.*, for *Marsh & Ferriman*, Worthing; *Gibson & Weldon*, for *H. G. Bellamy-Knights*, Shoreham.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

ASSOCIATION OF METROPOLITAN TOWN CLERKS

The third annual dinner of the Associate Members of the Association of Metropolitan Town Clerks was held at Lord's Hotel, St. John's Wood, on Friday, November 3, 1950, when there was an attendance of some seventy members and their guests.

The chairman was Mr. G. T. Lloyd, deputy town clerk of Holborn, the vice-chairman, Mr. C. W. Armstone, LL.B., deputy town clerk of Fulham, acting as toastmaster. The toast of the Associate Members was proposed by Mr. W. H. Bentley, town clerk of Paddington and president of the parent body, the Association of Metropolitan Town Clerks, to which the chairman replied in a witty speech. The toast of the visitors was proposed by Mr. F. C. M. Forward, deputy town clerk of Hampstead, and the response made by Mr. R. H. Williams, LL.B., deputy town clerk of Hendon and hon. secretary to the Associate Section of the Society of Town Clerks.

Other principal guests were Sir Parker Morris, LL.B., town clerk of Westminster and hon. clerk to the Metropolitan Boroughs' Standing Joint Committee, Mr. Frank Howarth, LL.B., town clerk of Widnes, Mr. W. A. McSkimming, deputy town clerk of Exeter and Mr. W. R. Harman, deputy borough treasurer of Finchley.

The company were entertained by Mr. Henry Taylor with stories and conjuring tricks and by the vice-chairman, the hon. treasurer (Mr. E. Parry Evans, deputy town clerk of Kensington), Mr. A. E. Odell, deputy town clerk of Poplar, and the hon. secretary (Mr. W. E. Lisle Bentham, deputy town clerk of Lewisham) who formed an amusing impromptu concert party and presented choruses on topical subjects and a costermongers *scena* in appropriate costume.

During the evening the chairman was presented with a silver gilt tankard in appreciation of his services.

NATIONAL ASSOCIATION OF PARISH COUNCILS

Lord Justice Denning's Presidential Address

The fourth annual meeting of the National Association of Parish Councils was held in London on November 10, 1950, when the Rt. Hon. Lord Justice Denning, was installed as President. He delivered an address on "The Constitutional Position of Parish Councils."

After paying a tribute to the late President, Sir Leslie Scott, Lord Justice Denning said that he too was a countryman, born and bred in Hampshire, and now living in Sussex. He said he had always lived in a country parish and had only come to the town for his work. He firmly believed that the best type of Englishman came from the English country villages and small towns and not from the large industrial town. The large towns have only sprung up during the last 100 years; whereas the English tradition has built up over 1,000 years. In the villages and small towns will be found men whose forefathers had lived there from time immemorial; and father has handed to son from generation to generation the lessons that the years have taught. The principal occupation round which the life of the community centres is agriculture, which, as Trevelyan says, "is not merely one industry among many, but is a way of life, unique and irreplaceable in its human and spiritual values." In the great towns there was no such way of life. The people there had not the inspiration which came from natural beauty nor the steadiness which came from deep roots. We had not suffered overmuch on this account yet, because the towns had been continually recruited and reinvigorated by men from the country. But this process cannot be continued indefinitely. We must see to it that our countryside was not to be denuded of its best men. We must keep in full vigour our villages and small towns which are the source and inspiration of our English way of life.

Macaulay said that "The history of England is emphatically the history of progress. It is a history of a constant movement of the public mind, of a constant change in the constitution of a great society." The truth of that statement had been particularly shown during the last century. There had been a social revolution accompanied by a constitutional revolution. When Dicey wrote in 1885 he could point to the Sovereignty of Parliament and to the rule of law as cardinal features of our constitution. Now in the year 1950 the emphasis had altogether changed. In legal theory Parliament is still sovereign and we still claim to be under the rule of law; but anxiety was felt in many quarters by the growing power of the executive. The change had no doubt been forced upon us by circumstances. Great wars cannot be fought except by giving leaders powers to make great decisions and to translate them into immediate action. Currency and trade in a competitive world cannot be safeguarded except by strict control over exchange, and over imports and exports. Fair distribution of necessaries which are in short supply cannot be endured except by a system of rationing. All this involved great powers being entrusted to the executive; and the powers once given, were apt to continue indefinitely. Some, indeed, have been made permanent; and others cannot be retracted.

This means, in practice, that Sovereignty no longer rests with Parliament. It rested with the executive and in particular, with the Cabinet. The Ministers, of course, gain their authority by being leading members of the party which wins the general election. So it might be said that ultimately they were dependent on the will of the majority of the people. But this was a very remote control, not only because there may only be a general election once every five years, but because it is often impossible to ascertain what was the will of the majority of any particular topic. Once elected the only real check on the power of the executive was the force of public opinion. This was a very real force; because governments realize that they are ultimately dependent for their power on the support of public opinion; and if the confidence of the people is destroyed by justifiable criticism, their position was rendered insecure and their chances of winning the next general election are lessened.

Hence the anxiety of the government to keep in touch with public opinion; and it was this very proper anxiety which had led to a new and striking feature of our constitution, namely, the constant consultation between the government and the various representative associations. You will find now that the governments are at pains to consult the various trade unions and professional associations before they pass legislation affecting the interests of their members. Thus they consulted the medical associations before they brought in the new Health Service and the legal associations before they brought

in the new Legal Aid Scheme. The reason for these consultations was because the associations can and do express the views of their members and reflect that side of public opinion, which, it may be presumed, the government do not wish to offend unless they feel it necessary in the national interest. It is obvious, however, that the government can only have the benefit of these views when the opinion of the members is organized by their associations. The government cannot in practice consult each individual member. Hence the importance of these associations. They form the channel whereby the opinion of the members is conveyed to the government.

The effect of these consultations is to diminish to some extent the authority of Parliament; because, if the government can present to Parliament a measure which has the agreement of all the representative associations, it goes through as an agreed measure with little or no opposition. The sanction of Parliament becomes almost a formality, although a necessary one. But, of course, when there was no agreement, it was a very different matter. If an influential association opposed it, the measure will probably be opposed in Parliament and the government may have to use its majority to get it passed; but that again emphasizes the power of the government and the weakness of Parliament. When opinion was organized in representative associations, it was respected and consulted by the government; but if it was unorganized and had no representative association, there was no known opinion to be respected and no opportunity for it to be consulted.

This brought Lord Justice Denning to the importance of the National Association of Parish Councils. He said it was the means whereby the opinion of the countryside can be known and can make itself felt. Whereas the views of one parish council might carry no weight, the views of all will command respect. And just think how representative each council is, or at any rate should be. All the residents of the parish over the age of twenty-one are entitled to vote; and the councillors are elected, not for any party or sectarian interest, but simply for their individual merit. They are as a rule public spirited people of good sense who are truly representative of local opinion. They bring their own minds to the problem in hand and are influenced by the merits of the argument and not by the dictates of a party. Even where one council is unanimous on what should or should not be done, its opinion is well worthy of consideration; and if the opinions of all parish councils coincide, they represent a force which no one can ignore. This association and the other associations with which it worked so closely, the Rural District Councils' Association and the County Councils' Association, are in an altogether stronger position than the trade or professional associations; because they are not representative of any party or sect but of the people as a whole. They are the elected representatives of the people and, in their respective spheres, they speak as much for the people as Parliament does in the national sphere. He ventured to think that by our constitution the government departments were bound to respect their views, just as they respected the views of Parliament.

So you see the new form of our constitution. Instead of the Sovereignty of Parliament, we have now the supremacy of the executive but this is checked by the force of public opinion, which makes itself known in innumerable ways; but the most representative, and therefore, the most important, voice in national affairs is expressed by Parliament, and in local affairs by the local councils; the councils most closely in touch with the people are the parish councils. Hence their importance.

What then were the affairs in which the parish councils may concern themselves? They were the successors of the old vestries and have all the powers and duties of the vestries in civil affairs, though not of course, in church affairs. Now the vestry was a very ancient institution, going back for hundreds of years. It was an assembly of the whole parish met together for the dispatch of the affairs and business of the parish. They usually met in the vestry of the church—hence the name—but they had jurisdiction in the civil as well as ecclesiastical affairs of the parish; and their civil jurisdiction has now devolved on the parish councils. So today the parish council represents the parishioners in respect of all civil parish affairs. In the words of the Act of Parliament, it "may discuss parish affairs and pass resolutions thereon." This gives the parish council a very wide authority. Its discussions are not necessarily confined to affairs which are the concern of the one parish only. There may be other parishes which have the same or similar problems; and it is very proper for each parish to consider how other parishes propose to deal with their like problems. If the same affairs should concern every parish in the country, then each parish is entitled to discuss them. In this way the discussion of the affairs of one parish may lead to the discussion of the affairs of all parishes and hence take on a national aspect. When that happens, the considered view of all parishes have great weight.

The late president of the Association expressed the principle very well in his Roscoe Lecture on Local Government when he said, "a local authority, in England or Wales, when exercising powers of local government conferred on it by law, does so in its own right and not as agent of the central government. Its decisions are its own, and its servants are its own, and not civil servants of the State". This is a principle which cannot be denied, for the simple reason that the local councils were elected by the people. They represented the people and are responsible to them and to no one else. If they were not to act on their own judgment but were to take their orders from the government offices in London, they would be acting in breach of their trust to the people. Sometimes, of course, their powers are limited by Parliament. They can only do such and such with the consent of the Minister, and so forth. But even so, they are not agents of the central government, and should not allow themselves to be put into that position. After all the local authorities have strong defences. They could discuss the position in their councils, and with the freedom of the press as their ally, they could bring to the notice of the people any attempt to over-ride their elected representatives; and, with the formation of their national associations, they could also bring the other councils to their aid. This strength of local government is one of the safeguards of the individual freedom of each one of us. In this respect it is put by a great constitutional historian—the present Master of Balliol, Sir David Keir—on a level with the independence of the judges. He says that, "The strength of local government must not be overlooked . . . So far as it recognizes that local people know best, and can best provide for local needs, local government is a counterpoise to parliamentary or administrative despotism".

In order to fulfil this high role, however, it was of the first importance that local government should attract the right men and women to serve as councillors; and to do this they must have interesting and responsible work to do. There are in this country always to be found public spirited people ready to take on a task which they feel to be really worth-while. You will find that the county councils and rural district councils are served by capable men and women fully representative of the best in their areas. This is largely because they have worth-while tasks, such as housing committees and so forth, of which everyone realizes the importance. Their sphere of activities should not be restricted or taken away; and the Prime Minister had recently said as much. He said that "he favoured giving freedom to local bodies to experiment and did not wish them tied down to a bare minimum". So long as they had this freedom, they will attract the right people to serve as councillors. It is just as important that the parish councils should be equally well served. They are not merely parochial. They do not stop at the village pump. Their great function is to be the voice of the village and to make its views known to the district councils, and to the county councils, and if need be, beyond to Parliament itself. Always of course will they act with discretion, always will they seek to co-operate, always will they listen to reason; but they have the great privilege and the great responsibility of being the best source of information as to the needs of the countryside; and if there is or should hereafter be, any danger of centralization going too far, their protests, would, he was sure, evoke a ready response throughout the land.

ROAD ACCIDENTS—JULY, 1950

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of July, 1950, is as follows:

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians:—			
(i) under fifteen	56	497	1,679
(ii) fifteen and over	109	621	1,788
Pedal cyclists:—			
(i) under fifteen	15	285	1,028
(ii) fifteen and over	63	893	3,099
Motor cyclists	100	1,197	2,266
Drivers	30	371	1,266
Passengers (sidecar or pillion):—			
(i) under fifteen	2	14	89
(ii) fifteen and over	27	363	830
Passengers (other vehicles):—			
(i) under fifteen	7	106	604
(ii) fifteen and over	41	660	2,938
All persons 1950	450	5,007	15,587
1949	415	4,277	12,769

THE TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS

The report to the United Nations by H.M. Government for 1949, which covers Great Britain, Northern Ireland, the Channel Islands and the Isle of Man, has recently been published. Attention is directed to new regulations which became operative from January 1, 1949; the Dangerous Drugs Regulations, 1948 (S.I. 1948, No. 2653) and the Raw Opium Regulations, 1948 (S.I. 1948, No. 2654).

The former regulations were made by powers conferred by s. 7 of the Dangerous Drugs Act, 1920, and have the effect of revoking the Hospitals (General Exemption) Order, 1924, and setting out the conditions under which dangerous drugs may be used in hospitals and other public institutions. They put upon authorized persons the onus of taking proper care of dangerous drugs in their possession, in particular, that such drugs should be kept when not in use, in a locked receptacle. A registered pharmacist whose authority to deal in dangerous drugs has been withdrawn will by these regulations no longer be allowed access to any stocks of these drugs. They also place upon a pharmacist, who dispenses prescriptions, the necessity to satisfy himself that all prescriptions are genuine. Pethidine and amidone are added to the list of drugs for which a separate register or part of a register must be kept.

The Raw Opium Regulations were made under powers conferred by s. 3 of the Dangerous Drugs Act, 1920, and are designed, *inter alia*, to extend to registered veterinary practitioners now admitted to the Supplementary Register of the Royal College of Veterinary Surgeons, the authority granted to registered veterinary surgeons. The regulations include, among authorized persons, public analysts and sampling officers under the new Food and Drugs Act passed since the date of the principal regulations and require authorized persons to keep a specific form of register, also placing upon them the responsibility for safe custody of drugs in their possession.

Another important change is that the preparations of opium which a practising midwife is allowed to possess and use are now limited to medicinal opium and tincture of opium.

On the question of drug addiction the Government's estimate of the number of addicts in the country, having regard to (*a*) those receiving drugs from medical sources: the number of known addicts receiving drugs from medical sources during 1949 was: Men, 164 and women 162; (*b*) those obtaining drugs from illicit sources. In virtually all cases where addicts are known to have obtained drugs from illicit sources, or to have employed illegal methods to obtain drugs from legitimate sources (chiefly by means of forged prescriptions), they were supplementing legitimate supplies, and were already known to the Home Office as addicts, being included in the figures given in (*a*). "However," says the report, "there is one interesting case in which a woman was suspected of being an addict but no proof could be obtained until November, 1949, when a woman known as "Countess K" died in hospital following an abdominal operation."

The "Countess" was an addict since 1924, and for many years she had been suspected of allocating part of the heavy supply of morphine prescribed for her by various doctors to her constant companion. On the death of the "countess" this woman was forced to confess to a doctor that she had been taking up to six grains of morphine a day from her companion's supply. She is now under treatment and it is hoped that a cure will be effected.

Seizures of opium and hemp make it clear that there are a number of users of these drugs among the coloured population, chiefly in the large cities, but no reliable estimate of their numbers can be given.

No exact details of age groupings can be given but the large majority of addicts are over thirty years of age, and the number of men and women are roughly equal, of the known addicts, one hundred belong to the professional classes, ninety-four being doctors, two being dentists, three chemists and one a veterinary surgeon.

Morphine remains the chief drug of addiction, being used by about eighty *per cent.* of addicts, sometimes in combination with one or more other drugs. Cases of heroin and cocaine addiction are now comparatively rare. Of the synthetic drugs pethidine is increasing in popularity, but there are only two known cases of addiction to amidone.

There is no compulsory treatment of addicts in the United Kingdom, but treatment is left to the discretion of the medical man in charge of the case. There are no State institutions specializing in problems of addiction, but there are a number of public hospitals where addicts can be treated, and several private nursing homes dealing almost exclusively with drug-addicts and alcoholics. During the year twelve men and nine women were reported as having been cured of their addiction. A total of 103 men and 234 women were known to be receiving regular supplies on grounds of genuine medical need. "While, as has been shown in past years, drug addiction does not present a serious problem in the United Kingdom, very strict supervision continues to be exercised for ensuring that steps are taken to prosecute persons guilty of offences specified in art. 2 of the Convention of 1936. There has been no change in the working of the department responsible for the prevention and where necessary prosecution, for these offences."

Dealing with the control of international trade the report says that the system of import certificates and export authorizations for the control of imports and exports of opium and other dangerous drugs continues to function satisfactorily. No cases of forged or falsified import certificates or export authorizations have come to the knowledge of H.M. Government in the United Kingdom during the year.

The only evidence of continuous illicit traffic in narcotics in the United Kingdom during 1949 was in respect of opium and hemp, seizures of both these drugs being made throughout the year by preventive officers of H.M. Customs and by the police. In addition, there were two major cases of trafficking in manufactured drugs.

The total number of seizures of opium during the year by H.M. Customs was eighteen against twenty-two in 1948, but the quantity was larger than in the previous year, amounting to eighteen kgs., and a further four kgs. were seized by the police. All the opium seized appears to have been smuggled into the country and there is no evidence of diversion from legitimate trade.

The greater part of the raw opium seized was of the Iranian "stick" type, which appears to have been acquired in the Persian Gulf area, and in all cases where opium was seized the offender was either of Chinese or, more rarely, of Indian origin. On two occasions when premises in London, used for opium smoking, were raided, prepared opium was found inside a lemon, having been inserted through a small hole cut in the peel. Although no proof has so far been obtained, it is assumed this device is used for the purpose of smuggling.

Seizures of hemp at the ports during the year totalled only twenty-eight compared with thirty-two in 1948, but as with opium the quantity involved was larger, being about twenty-two kgs.; an additional three kgs. were seized by the police. As in 1948 the traffic in this drug was centred almost exclusively in the major cities, and was largely confined to persons of African, West Indian and Indian origin.

A total of 168 prosecutions were launched under the Dangerous Drugs Acts and Regulations and in 159 cases a conviction was obtained. Sixty convictions related to the unlawful importation and possession of hemp; fifty-one to the unlawful importation, possession or smoking of opium, and one case involving both drugs. Ninety-one cases involved non-Europeans. Those convicted included twelve doctors (four of whom were prosecuted for offences against the new regulation extending to them the necessity for keeping dangerous drugs in a locked receptacle when not in use) and ten were chemists. As a result five doctors had their authority to possess, supply and prescribe dangerous drugs withdrawn, but it must be pointed out that in no case involving a doctor or a chemist was there any suggestion of illicit trafficking.

In the early part of the year thefts of dangerous drugs were reported from chemists' shops in Walsall and Birmingham and following investigations a warrant was obtained to search the residence of a coloured man in an apartment-house in London. Four men were eventually charged and sentenced to imprisonment.

Attached to the report are a number of appendices giving details of seizures of drugs, and imports and exports of the various drugs and preparations into and from Great Britain to other countries.

REPORT ON FIRE SERVICES

At the commencement of his report for 1949, H.M. Chief Inspector of Fire Services, records that, following the first inspection of the county and county borough fire brigades in England and Wales, in no case was any serious deficiency found which would affect qualification for Exchequer grant. At the end of his report, confidence was expressed that very satisfactory progress is being made, particularly bearing in mind difficulties which are referred to. In the body of the report, a clear and helpful picture is given of fire service administration as it is, the ways in which satisfactory results are being sought and approached are described, and practical suggestions are made of means by which efficiency can be increased.

An increase in the whole-time authorized (permanent) establishment of fire brigades during 1949, from 18,734 to 19,527 men (including 826 for ambulance duties in seven counties and fourteen county boroughs) was largely due to the conversion into permanent posts of temporary posts which had been provided to meet deficiencies of part-time men. A slight increase, from 509 to 514, occurred in the case of women. Excluding additional establishments of firemen for ambulance duties, the deficiency of whole-time permanent firemen in service decreased from 1,616 at December 31, 1948, to 1,375 at December 31, 1949. Recruits numbering 1,800 during 1949 exceeded the 1,200 leavers but a continuance of recruiting difficulties was specially noticeable in London and the Midlands. A "turnover," apart from retirements on pension or for medical reasons, of some ten *per cent.* seems higher than might be expected in an occupation with assured pay and pension. Nearly one-half of the 876 men who resigned during 1949 had served

for less than two years. In general, no progress was made during 1949 in meeting the need for part-time men as such, 1,939 being recruited to replace a wastage of 1,959.

Nearly all local authorities have complied with a recommendation of the Central Fire Brigades Advisory Council that, save in exceptional circumstances, control room staffs should be members of fire brigades. In four separate fire schemes covering six large authorities wireless communications are in use, and installation is proceeding in a fifth scheme. Schemes sharing wireless with police services operate in relatively fewer (twelve) counties than (thirty-one) county boroughs, suggesting that geographical considerations (from which cost and efficiency stem) have not received as much recognition in this connexion in counties as would be expected; the 1948 annual report mentioned that some fire authorities were unable to proceed pending the installation of the police wireless.

Fuller reference is made in the 1949 than 1948 report to the subject of appliances, about which anxiety is felt on grounds of age, bearing in mind the generally accepted average life of fifteen years for a pre-war fire-fighting appliance and an average of ten to twelve years for appliances built during the war; 259 pump escapes and pumps in commission in 1949 were between fifteen and twenty years old, forty-nine were over twenty years old and 776 were war-time appliances. Nearly all of the 783 water tenders are regarded as unsuitable, but the 1,038 towing tenders and 2,808 trailer pumps are reckoned to be reasonably efficient and their replacement not such an urgent matter. The supply position for water tenders was expected to become easier in 1950, like that for new pump escapes. A considerable increase in the supply of new appliances generally is said to be required; also, that this is fully realized by fire authorities, and the Home Office are using every effort with this end in view.

Experience in 1949 is stated by H.M. Chief Inspector to have "brought into even greater prominence the regrettable condition of many of the premises from which fire brigades have to operate," and he "cannot express too strongly" his concern over the present state of affairs. Not only, he continues, is the operational efficiency of the fire service hindered by worn out fire stations and improvised headquarters and workshop accommodation, but in some places there is a serious risk of a continued loss of men. However keen a retained unit may try to be, it is difficult for it to maintain its keenness or to inspire others with the desire to join the brigade if the appliances are housed in leaky barns, in commercial garages or in tumbledown huts, as so many are at present. Sixty-three *per cent.* of existing fire stations are classified as requiring replacement by new buildings, twenty-five *per cent.* as needing extensive alterations to meet modern conditions and only twelve *per cent.* as reasonably meeting present day requirements. A disappointing outlook is envisaged from comparatively small authorized capital investment within the framework of the Government's economic policy.

Among numerous other matters, comment is made upon revival of the Auxiliary Fire Service as part of civil defence plans. The general object of ministerial regulations in this connexion is stated to be to facilitate the creation of an emergency fire service *pari passu* with the development of general civil defence plans, emphasis at the outset being placed on the measures necessary to expand local brigades in the event of war, the first step being the recruitment and training of auxiliary firemen and firewomen. As an initial target, fire authorities have been asked to aim at recruiting two male auxiliaries for every whole-time member and one for every part-time member already on the authorized establishment of a brigade, with women auxiliaries up to ten *per cent.* of the number of male auxiliaries.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 77.

SHORT MEASURE

The licensee of a hotel at Burnham, Essex, appeared at Southminster Magistrates' Court early in September last, charged with serving a less measure of beer than was purported to be sold contrary to s. 1, Sale of Food (Weights and Measures) Act, 1926. For the prosecution, an inspector of weights and measures gave evidence that, having gone into the public bar of the hotel he asked for two half pints of mild and bitter. The defendant had taken two stamped glasses and had pumped from beer engines. From the time the beer had left the taps until the time that it was handed over, none had been spilt and there was very little head on either glass. The inspector had asked the defendant if he thought the glasses were full and the defendant had replied that they were as full as possible.

The inspector stated that in the first glass the beer was a quarter of an inch from the top and in the second glass one eighth of an inch. The inspector had told the defendant licensee who he was and had then measured the contents of both glasses. In the first half-pint there had been a deficiency of 7½ fluid drachms and in the second half-pint 4 fluid drachms. This represented deficiencies of nine *per cent.* and five *per cent.* respectively. A deficiency of 7½ fluid drachms amounted to an overcharge of .656 of 1*d.*

In cross-examination the inspector stated that it was a matter of indifference to him whether his beer had a head on it or not and he was then asked to fill the glass to the brim with beer and to lift it from one side of the witness box to the other. During this operation some of the beer was spilt, but the inspector pointed out that it was possible to bend over the glass, which would obviate the necessity of raising it.

For the defence, Mr. J. P. Nolan, solicitor, said that it was an important case so far as the licensed trade was concerned. He agreed that members of the public were entitled to full measure, but in the case of beer it would mean that, having drawn the beer, the publican would have to say to his customer "Do not touch that until the head has gone." Thereafter the publican would have to fill the glass to the brim.

He submitted that it had never been intended that the statute should be interpreted in this way in relation to draught beer, and he stressed that if the licensee sought to protect himself by selling an excess quantity he would be guilty of an offence under s. 7 of the Licensing Act, 1921, which prohibits "the long-pull."

For the inspector, it was pointed out that it was lawful for half-pint glasses to be half a pint plus four fluid drachms.

After the Bench had retired to consider the case the chairman stated that they considered the case a very interesting one, and that they had decided to convict. A fine of £3 was imposed. The licensee later appealed to Essex Quarter Sessions Appeals Committee sitting at Chelmsford, when he was represented by counsel (Mr. Christmas Humphries).

Counsel for the respondent justices stressed that the regulations permitted the use of glasses for the sale of half-pints of beer which had a measured line about half an inch below the rim of it in order to avoid the slopping of beer. Another alternative, said counsel, was the use of tankards or glasses which had been cast with an error slightly in excess of the calibrated size.

About ninety-five *per cent.* of the glasses used in public houses were of this type and it was possible with them to serve full measure leaving room for the "head" and to avoid spilling. The glasses used by the appellant were, however, of the precise half-pint size.

In cross-examination the inspector admitted to Mr. Christmas Humphries that he had never seen one of the out-size half-pint glasses in licensed premises in Essex.

For the appellant, it was stated that he had held the licence of the hotel at Burnham for fourteen years without complaint and that no one had a greater respect for the law than he. If it was to be said that the appellant should have had the over-size type of glasses why was it, asked counsel, that there had been no directive that in future exact half-pint glasses would not be stamped. Counsel stressed that if the conviction was allowed to stand it would place licensees all over the country in jeopardy.

The chairman, Mr. Sydney Turner, K.C., said the Appeals Committee felt that, having regard to all the circumstances, it was inexpedient to inflict punishment. The appeal would be dismissed with costs but instead of the fine of £3 the appellant would be discharged conditionally for twelve months.

COMMENT

This case has aroused great interest and considerable anxiety in trade circles all over the country and it is impossible to withhold a measure of sympathy for the licensee, who, having purchased Government stamped glasses of the half-pint size, proceeded to fill them more or less in accordance with the usual custom. It cannot be denied that the average customer dislikes to have his beer slopped over the side of the glass and it is not customary, when drinking beer, to lower one's face to the counter and to lap it up in the manner of a dog.

On the other hand, the evidence clearly showed that there was a substantial deficiency in measure and it would seem that the obvious remedy is to insist upon the use of over-size glasses upon which there is

a line drawn some distance below the brim to indicate the half-pint measure.

The long-pull referred to in the report above is, it is believed, the only statutory prohibition of over-measure in the sale of any article of food, except in so far as the over-measure or over-weight may be affected by certain rationing regulations.

Section 9 of the Licensing Act, 1921, provides that no person in any licensed premises or club shall sell or supply to any person as the measure of intoxicating liquor for which he asks, an amount exceeding that measure. In these days of depression in the licensed trade it is improbable that many licensees bring themselves within the ambit of the section !

R.L.H.

No. 78.

OFFENCES UNDER THE PHARMACY AND MEDICINES ACT, 1941

A man described by the police as a very respectable person appeared at Swansea Magistrates' Court before the learned stipendiary magistrate, Mr. H. L. Williams, K.C., recently, charged with two offences under the Pharmacy and Medicines Act, 1941.

The first charge alleged that he had unlawfully sold by retail at a stall an article consisting of a substance recommended as medicine, *viz.*, " An American Indian serum " there not being written on the container or a label affixed thereto the appropriate designation of the substance so recommended or of each of the ingredients of which it had been compounded, contrary to s. 11 (1) of the Act. The second charge alleged a contravention of s. 12 (1) of the Act in that the defendant when selling was not a registered medical practitioner, a registered dentist, an authorized seller of poisons, or a person who had served a regular apprenticeship to a registered pharmacist.

For the prosecution which was instituted by the Pharmaceutical Society it was stated that the defendant was seen at a stall on a bombed site and there were about a dozen bottles of a dark brown liquid on a stand. The bottles were labelled " Seven days' cure. The American Indian serum. The only permanent cure for rheumatism." The bottles were labelled £1 1s. but the prosecution witness stated that he had bought one for 2s. 6d.

The defendant stated that the secret of the cure for rheumatism had been handed down to him by his mother and he had had it for years. He had written to the Minister of Health, but the latter had replied that he was not in a position to take advantage of the product. The defendant also produced a letter stating that a Swansea wife, previously crippled with rheumatism, had been cured in seven days and he also produced a letter from the manager of the Arsenal Football Club asking for further details of his product.

The defendant promised the learned stipendiary magistrate that he would not repeat the offence and that, if he offered the bottles again for sale, the contents would be clearly marked on the label ; he was, however, loath to print the ingredients on the label.

The defendant was fined 40s. upon each summons.

COMMENT

The Act of 1941 contains very detailed provisions designed to prevent the hawking of quack remedies and the two sections under which the charges against the defendant were preferred indicate the method of attacking the evil.

Section 11 provides that articles recommended as medicines must, with certain exceptions, *e.g.*, a medicine prescribed for a particular person, contain on the article or its container, the particulars of the ingredients and s. 12 restricts severely the sale of medicines by unauthorized persons.

Both sections provide that, upon a first conviction a fine not exceeding £20 may be imposed and in the case of a subsequent conviction three months' imprisonment and a fine of £100 may be imposed.

R.L.H.

PERSONALIA

HONOUR

Mr. E. A. Bailey, M.P.S., has received the honorary freedom of the borough of Boston in recognition of the eminent services which he has rendered, particularly in connexion with public health, as a member of the council of the borough from 1921 to 1950. Mr. Bailey was mayor of Boston in 1928-29 and an alderman from 1942 to 1950. From 1925 to 1946 he was chairman of the public health committee.

APPOINTMENTS

His Honour Hubert Hull, C.B.E., has been appointed a member and the president of the Transport Tribunal in succession to Sir William Bruce Thomas, K.C. He was born in 1887 and was called to the Bar, Inner Temple, in 1910 ; he is a Bencher. He was a member of the Royal Commission on the Press in 1947, and was made an officer of the Order of Orange Nassau in 1949. He has been an official referee of the Supreme Court since 1949.

Mr. Thomas James Marriott has been appointed assistant solicitor to the Hornchurch urban district council. Mr. Marriott was previously an assistant solicitor with the Northampton county borough council and was admitted in July, 1950. During the war he served in the Royal Navy.

Miss Dorothy Aspery has been appointed a probation officer for the city of Manchester. She has had probation experience as a temporary officer in London and as a student in Birmingham.

Miss M. A. L. Hayden, a probation officer for the Essex combined area at Romford, has been appointed a probation officer to the Lancashire No. 1 combined probation area. Miss Hayden has previously served as a probation officer in Bradford, Yorks.

Mr. R. V. Polgraham, probation officer at Bristol, has been appointed a full-time probation officer by the Somerset combined area probation committee. Mr. Polgraham, who is forty-six, was previously a temporary probation officer in the county of Somerset. During the war he served in the army attaining the rank of major.

RESIGNATIONS

Mr. E. J. O. Gardiner, LL.B., town clerk and clerk of the peace for the borough of Andover, has resigned to become the assistant secretary to the Association of Municipal Corporations. When he was appointed town clerk at the age of thirty, twelve years ago, Mr. Gardiner was the youngest town clerk in England. He was appointed clerk of the peace for the borough in 1941., Educated at King's College, London, Mr. Gardiner was admitted a solicitor in 1933. He was appointed assistant solicitor to Guildford corporation and took up duties of deputy town clerk and assistant clerk to Gravesend education committee. From Gravesend he went to Andover.

Dr. Percy L. T. Bennett, M.C., M.R.C.S., L.R.C.P., T.D.D., D.P.H., medical officer of health of Fulham since 1945, has resigned after having completed over twenty-five years in local government service. He was appointed tuberculosis officer and assistant medical officer of health in Fulham in 1928 and on the re-designation of his position in 1933 became deputy medical officer of health and tuberculosis officer. He was consultant in tuberculosis to the Fulham hospital from 1928 to 1945. During the first world war Dr. Bennett served in the R.A.M.C., and was awarded the Military Cross.

Lieut.-Col. S. J. L. Hardies, D.S.O., LL.D., has resigned his appointment as a part-time member of the British Transport Commission, having been appointed chairman of the Iron and Steel Corporation of Great Britain.

OBITUARY

Mr. S. J. Burdett, probation officer in the Nottinghamshire combined probation area, died on November 8, 1950. He was fifty-nine. Mr. Burdett was first appointed a part-time officer in 1922 and became full-time in 1926, thus being associated with the Nottinghamshire combined area since its inception as such.

REVIEWS

Rogers' Questions and Answers on Criminal Law. Fourth edition by Katharine P. Hurst. London : Sweet and Maxwell, Ltd. Price 6s. 6d. net.

Among the many ways of learning, one of the best is by way of question and answer. The student who has read diligently soon finds out how much he has really learned when he attempts to use his knowledge to answer questions. Herein lies the value of the new edition of this little book : it will help the law student preparing for an examination by putting him to a searching test, and if he can answer most of the questions he has little to fear, for the ground covered is extensive and the answers supplied are clear and backed by reference to statute or case law.

Many a new magistrate who is trying to gain a good working knowledge of criminal law may find pleasure and profit in testing himself from time to time by trying to answer some of the questions. He may not wish to take the trouble to write down his answers, but the mental exercise of framing an answer will prove both interesting and valuable.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

LAW OF TREASON

Mr. E. Thurtle (Shoreditch and Finsbury) asked the Attorney-General in the Commons whether he was satisfied that the existing law against treason was adequate in situations in which the British Government was waging war not as a separate unit but as part of the forces of the United Nations Organization, as in the case of the Korean war; whether he was aware that collective war of that kind was now the only sort of war in which this country was likely to be engaged; and whether he would amend the law against treason accordingly.

The Attorney-General, Sir Hartley Shawcross, replied that in the existing state of international law as laid down by the Pact of Paris, 1928, the Charter of the United Nations, if armed conflicts occurred in the future they were likely, as in the present Korean conflict, to take the form of an attack by one or more States in breach of the Charter of the United Nations and of collective action by other States on behalf of the United Nations with the object of restoring peace and enforcing the rule of international law. In his opinion, the law of treason was as applicable to such a conflict as it was to an ordinary war between State and State.

Mr. E. Fletcher (Islington, E.) asked, in a supplementary question, whether the Attorney-General agreed that the whole law of treason was out of date and that at present offences were being committed which, although technically treason, did not merit the death sentence. Was it not desirable that the law of treason should be changed so that prosecutions could take place with a view to exacting some other penalty which was less than death?

Sir Hartley Shawcross replied that that was a different question, but it was certainly a matter for consideration.

JUVENILE DELINQUENCY

Dr. B. Stross (Stoke-on-Trent) asked the Secretary of State for the Home Department whether he was aware the cases of juvenile delinquency had fallen appreciably in number except for children eight to thirteen years of age; and why that was so and what remedy he had in mind.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that in 1949, the number of juveniles, including children aged eight to thirteen, found guilty of indictable offences at magistrates' courts fell appreciably as compared with 1948, but in 1950 the numbers had been rising again. Provisional figures for the first nine months of 1950 for England and Wales showed that 19,767 boys and girls under the age of fourteen, and 11,772 aged fourteen-seventeen, were found guilty of indictable offences and dealt with in magistrates' courts. The figures for the corresponding period of 1949 was 18,820 and 11,446. The increases were thus 947 and 326, or five *per cent.* and 2.8 *per cent.* The relatively greater increase in the under fourteen group could not be assigned to any one cause. Local authorities generally were acting on the memorandum on juvenile delinquency which was issued in April, 1949, by the Secretary of State for the Home Department and the Minister of Education.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 21

TRANSPORT (AMENDMENT) BILL, read 2a.

Thursday, November 23

PENICILLIN (MERCHANT SHIPS) BILL, read 2a.

EXPIRING LAWS CONTINUANCE BILL, read 2a.

HOUSE OF COMMONS

Monday, November 20

LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) BILL, read 1a.

ADMINISTRATION OF JUSTICE (PENSIONS) BILL, read 2a.

SUPERANNUATION BILL, read 3a.

Tuesday, November 21

PUBLIC WORKS LOANS BILL, read 2a.

Wednesday, November 22

LIVESTOCK REARING BILL, read 1a.

REINSTATEMENT IN CIVIL EMPLOYMENT BILL, read 2a.

Thursday, November 23

FESTIVAL OF BRITAIN (SUNDAY OPENING) BILL, read 2a.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"SUCCESSION BY DEFINITION TO TENANCY"

We are very pleased that our brief letter should have given rise to the most interesting article on p. 600.

With respect, we do not think Miss Robinson's claim "involved also the proposition that she was tenant by virtue of the definition in s. 12 (1) (g)." If the contractual tenancy had still existed at her father's death and she were sued, she would merely need to say that the contractual tenancy was vested in her as administratrix, and had never been determined by notice to quit. (The letter on p. 350 of the report cannot, it is submitted, be construed as a notice to quit.) If after a notice to quit, another action was brought against her, she could say that she had as administratrix impliedly assented to the vesting of the contractual tenancy in herself as universal beneficiary (it is generally recognized that an assent of a legal estate need not be in writing where assentor and assentee are the same person), and that on expiry of the notice to quit she was entitled to hold over as statutory tenant.

Yours faithfully,

BORLASE & VENNING.

Solicitors.

58, Morrab Road,
Penzance.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Child dead—Can order be applied for to obtain funeral expenses?*

A year ago A., who is sixteen years of age, gave birth to an illegitimate child and B, the father of the child, paid A the sum of ten shillings each week towards the child's maintenance. No court order was obtained and no written agreement concluded between the parties. The child died some four months ago and A now wishes to know if she can obtain an order compelling B to pay the funeral expenses or a proportion thereof. Your advice upon this point would be greatly appreciated. JEK.

Answer.

The circumstances are unusual, but we can find no legal objection to an application being made now, and it is within the power of the court to make the order asked for.

We assume that A is in a position to prove the payments by B within twelve months of the child's birth.

2.—Criminal Law—*Breaking and entering—Partly open window secured by fastener, entry by undoing fastener and further opening window—Is this a "breaking"?*

Your valued opinion would be appreciated regarding a friendly disagreement amongst some of my colleagues. I attach hereto a press cutting (*Police Review*, August 11, 1950) with an opinion with which some of us do not agree. In it reference is made to the cases of *R.* v. *Smith* (1827) 1 Mood. 178 and *R.* v. *Robinson and Bacon* (1831) 1 Mood. 327. The writer knows of many convictions before His Majesty's judges both in counties and at least one city, and also before learned chairmen of quarter sessions in counties, one city and at least one county borough, where the M.O. of the breaking and entering was by either lifting a catch of a transom window or by lifting the catch of an insecure scullery or kitchen window, or by operating the ratchet and further opening the windows, all of which were slightly open, insufficient to admit the entrance of a person, but were definitely secured on catches or ratchets.

I also enclose a press cutting taken from the *Coventry Evening Telegraph*, dated August 14, 1950, wherein it will be seen that two prisoners have been committed to the ensuing city quarter sessions, charged with housebreaking, and from the inquiries I have made I find that the circumstances are as outlined above, *i.e.*, an open fanlight which the occupier had left about six inches open but fastened on a ratchet.

It would appear strange that in all the many cases which have been dealt with on indictment, without appeal to higher court, if they have been allowed to be wrongly admitted. JOX.

Answer.

This is not an easy question. In *R.* v. *Smith*, *supra*, there was no tampering with any fastener. A sash window which was partly open was pushed further open. In *R.* v. *Robinson*, *supra*, a window was closed and secured by a fastener but a pane of the glass had a hole in it large enough to admit a hand. The thief put his hand through the hole, breaking more of the glass, reached and undid the fastener and opened the window.

In this latter case *R.* v. *Smith*, *supra*, was mentioned, and it is stated in the report that the judges thought it worth considering whether in both cases the facts did not constitute, in point of law, a sufficient breaking.

When the judges met later and considered the case of *Robinson* they were unanimously of opinion that this was a sufficient breaking, *not by breaking the residue of the pane, but by unfastening and opening the window.*

On this we are inclined to think that where a partly open window is secured in that position by some kind of fastener, so that in order to enter a person has to undo the fastener before he can further open the window, the undoing of the fastener and the further opening of the window constitute a sufficient breaking.

We can find no more recent authority on the point.

3.—Criminal Law—*Hackney carriage fare—Avoiding payment—Charge of obtaining credit by fraud.*

Referring to P.P. 2 at p. 684, *ante*, I would be greatly indebted to you if you would further consider the point "Bilking taxi driver—credit by fraud." We are taught to distinguish between the café meal and the cab case, in this respect. When one is served on the table with a meal a debt is incurred and credit is allowed while one consumes the food, the bill being presented for payment some ten or fifteen minutes later. In other words, one is not asked to pay on the nail, as one is on the completion of a journey by cab. In a journey by cab a debt is occasioned at the end. Credit is not given.

Where does the cab differ from the train or bus fare case?

I saw the quarter sessions case, but there were several other cases charged and the credit by fraud case was not contested as it might be if taken alone.

The clerk at my court (he is a very competent clerk) will not accept the cab case as credit by fraud. Other courts nearby differ in practice; some convict the defendant who invariably pleads guilty, others do not, stating that the Town Police Clauses Act, 1847, provides the remedy. JEM.

Answer.

As we said in the article at p. 445 we do not pretend that the matter is free from doubt. We have dealt in the article with the points raised in this question, and we do not think we can usefully add anything to what we said there. We had particularly in mind the taxi cab proper, with a meter, but we think that the same principle and the same arguments apply however the fare is fixed or ascertained.

4.—Guardianship of Infants—*Summary order giving custody to mother with maintenance—Subsequent divorce giving custody to father but leaving child in care and under control of mother—Enforceability of summary order for maintenance.*

Three years ago, an order was made by a court of summary jurisdiction, under the Guardianship of Infants Acts, giving the legal custody of a child to its mother and the father was ordered to pay £1 per week towards the maintenance of the child. The father was given access to the child. The father has now obtained a decree absolute of divorce, on the ground of his wife's desertion, and an order has also been made by the High Court giving him the legal custody of the child, but directing that the child should remain in the care, and under the control, of the mother.

1. Do you think that the order of the High Court automatically renders unenforceable the magistrates' order? It will be borne in mind that a magistrates' court can only direct a father to contribute towards the maintenance of his child, under the Guardianship of Infants Acts, where it has made an order granting the legal custody of the child to the mother, or some other person.

2. If your answer to the above question is in the affirmative, it would seem that the mother should now apply to the High Court for an order directing the father to contribute towards the maintenance of the child. SES.

Answer.

This is an unusual situation but on the whole we think:

1. Yes, but the father should apply for the order to be discharged on the ground that the divorce court has given custody of the child to him.

2. We agree.

5.—Justices' Clerk's Fees—*Fifteen indictable charges—Accused committed for trial—How many fees?*

A prisoner was charged before a court of summary jurisdiction with fifteen indictable cases, all arson, and the prisoner was sent for trial on all the charges.

Should the county authorities pay the fee of £1 5*s.* in respect of each indictable case on which the prisoner was sent for trial, *i.e.*, £18 15*s.*? The county authorities contend that it should only be £1 5*s.* in respect of each prisoner sent for trial, and not £1 5*s.* for each indictable case. JYM.

Answer.

The word "case" used in the appropriate paragraph of sch. 1 to the Criminal Justice Administration Act, 1914, is ambiguous. As we said in answer to a similar question at 112 J.P.N. 799, P.P. No. 5, we think, with some hesitation, that fifteen fees may be charged, although we realize the force of the argument that the whole matter is only one "case."

6.—Landlord and Tenant—*Landlord and Tenant (Rent Control) Act 1949, s. 11—Expired or renewed contract.*

I have to raise a query concerning the application of s. 11 of the Act of 1949, upon which I would like your advice.

Where a tribunal has extended a notice to quit, and therefore set aside the effective date of that notice for three months, and the lessee has failed to make further application before the expiry of that date, would it be possible for him to make another application in respect of any subsequent notice to quit that may be served upon him, where the lessor has refused to accept rent after the expiration of the ex-

tension period previously granted. The view that I take is that with the expiration of the extension period and the non-acceptance of rent, the contract of letting, which the lessee had previously referred to the tribunal, has been put at an end, and with the non-acceptance of rent subsequent to that date there is no longer a contract of letting in existence to which the 1946 Act might apply, and therefore, neither would there be a contract which the lessee could refer to the tribunal. I also feel that it would not be necessary for a lessor to serve such a further notice to quit, but in practice this is often done, mainly due to the lack of understanding of what effect the extension period would have at its expiration.

If a lessee failed to come back and the lessor continued to accept rent after the expiration of the extension period, would you confirm that it is permissible for the lessee to make application again in respect of any further notice to quit that may be served upon him.

ANU.

Answer.

Upon expiry of the period named in a valid notice to quit, or allowed by the tribunal under s. 11 by way of extension, the tenancy is at an end: *Maconochie* v. *Brand* [1946] 2 All E.R. 778. If the relation of landlord and tenant continues after the said period, it can only be by agreement between the parties. A subsequent notice to quit is a mere nullity, unless upon all the facts it can be found that a new contract has been entered into: *Loewenthal* v. *Vanhonte* [1947] 1 All E.R. 116. Acceptance of rent by the former landlord, after the said period, is the strongest evidence that there is such a new agreement, though even this is not conclusive: *Clarke* v. *Grant* [1949] 1 All E.R. 768. Where, as here, no rent has been so accepted, it follows that service by the landlord of a notice, which itself is a nullity, cannot revive the tribunal's powers. *Loewenthal* v. *Vanhoute*, *supra*, seems to answer your question exactly. If the parties have, upon the facts, made a fresh contract, the Acts including s. 11 will apply, but the above cases show that this is not to be lightly assumed. *See* also our article at 114 J.P.N. 333.

7.—Licensing—*Sale of intoxicating liquor in Air Force canteen under authority of Secretary of State—Sales to civilians—Sales outside permitted hours—Refusal to permit entry by police officer—Whether offences committed.*

A Royal Air Force maintenance unit is established in this division, at which service and civilian personnel are employed. They hold a canteen under authority of the Secretary of State and an excise general licence for the sale of intoxicating liquor which is supplied to both airmen and civilian staff. The canteen is run by a committee under the control of the commanding officer. Dances are held occasionally in a hall where the canteen is situated.

Recently, the hall was lent to the local branch of the British Legion for a dance in aid of the Legion funds. The dance was advertised and the general public were admitted on payment of 2*s.* 6*d.* each person. The canteen was open during the dance which terminated at midnight, and intoxicating liquor was sold to patrons until that hour. Permitted hours in the district terminate at 9 *p.m.* Profits from the sale of liquor went to the canteen funds.

A police sergeant visited the dance at 11 *p.m.* in the ordinary course of his duty, but was refused admission. He was informed that this right was reserved because the dance was held on "private property," but was told that he would be allowed to enter if he paid 2*s.* 6*d.* admission fee. He did not, however, avail himself of this.

Do you consider that the licensing laws were contravened by the sale of intoxicating liquor under the circumstances outlined above?

Had the R.A.F. authorities the right to refuse admission to the police sergeant?

NARVO.

Answer.

Section 81 of the Licensing (Consolidation) Act, 1910, empowers a constable to enter licensed premises: "licensed premises" are defined in s. 110 of the Act as "premises in respect of which a justices' licence has been granted and is in force." No justices' licence is held in respect of the canteen mentioned by our correspondent and, therefore, according to the definition set out above, no offence was committed when the constable was denied admission. Section 18 of the Licensing Act, 1921, enlarges the definition to "any premises or place where intoxicating liquors are sold by retail under a licence"—which is wide enough to bring within its scope the canteen referred to. The two Acts are to be construed as one (s. 22 (2) of the 1921 Act) and it might be held, if the point were taken, that the definition in the latter Act replaced that in the former; but in the absence of express words of repeal we incline to think that the expression "licensed premises" as it appears in s. 81 of the Act of 1910 is to be construed according to s. 110 of the same Act.

The law as to permitted hours is contained in ss. 1-4 of the Licensing Act, 1921, but s. 5 (*f*) removes from the scope of these sections the sale or supply of intoxicating liquor in such a canteen as our correspondent describes. It is to be noted that no less than three of the earlier saving provisions in this section deal also with "consumption," but the saving in respect of canteens deals with "sale or supply" only. Therefore, we think that an offence is committed under s. 4 (*b*) of the Act of 1921 by any person who consumes intoxicating liquor on the premises outside permitted hours. Possibly, the evidence would also disclose an offence by the actual seller of aiding and abetting the consumption. *See* also the King's Regulations for the Army and Army Reserve, para. 1638, quoted in *Paterson*, 58th edn. at p. 804. These regulations are, of course, only binding on military personnel.

No offence is committed by selling intoxicating liquor to civilians in the canteen (*Dickeson & Co.* v. *Mayes* (1910) 74 J.P. 139).

8.—Road Traffic Acts—"*Road*"—*Ground set apart by local council as parking place—Access from it to two adjoining streets—Is it a road within the* 1930 *Act*, *s.* 121?

I should be obliged if you would let me have your opinion on the following query.

In a nearby town there is a square-shaped piece of ground used as a parking ground, and it is, in fact, a recognized car park provided by the local council. There is no charge made for parking. It is bounded on three sides by M Street, B Street and C Lane, and the remaining side adjoins a school playground. Dividing the parking ground from the pavements of M Street and B Street is a fence consisting of concrete posts and detachable chains. It is divided from C Lane partly by an iron fence and partly by a brick wall (there is no pavement). There are two entrances to the parking ground, one from M Street and the other from C Lane. The site is the property of the local council, and has a cinder surface. On two days of the week, the council erect stalls on this piece of ground, and it is then in use as an open-air market. Pedestrians sometimes make use of the parking ground as a short cut between M Street and C Lane.

The point that has arisen is whether this parking ground (when in use as such) can be defined as a "road" for the purposes of s. 121 of the Road Traffic Act, 1930. I would refer to the Road Traffic Act, 1930, s. 29 (2); and the cases of *Harrison* v. *Hill* (1932) S.C. (J.) 13; *Bugge* v. *Taylor* (1940) 104 J.P. 467; *O'Brien* v. *Trafalgar Insurance Co., Ltd.* (1945) 109 J.P. 107; and *Purves* v. *Muir* (1948) S.C. (J.) 122.

JINX.

Answer.

It is difficult to prophesy how, on the facts of a particular case, this point might be decided by the High Court, but our view is that this ground is not a road. *Bugge* v. *Taylor* (*supra*) was decided on its special facts, and we think it would be extending this decision unjustifiably to call this parking ground a road.

9.—Sunday entertainments—*Cinematograph licence—Method of payment of prescribed percentage and amounts to charities—Form of licence.*

A who is the owner of a cinema recently applied to the justices, who are by delegation the licensing authority under the Cinematograph Act, 1909, and are empowered to allow places in the district licensed under the Act of 1909 to be opened and used on Sundays for the purpose of cinematograph entertainments, for a licence to allow his cinema to open on Sundays. The justices granted the application, subject to certain conditions, one of which was that he should pay £X on each Sunday on which the premises were opened, the amount to be divided between various charities after deduction of the prescribed percentage of five *per cent.* in accordance with s. 1 (1) (*b*) of the Sunday Entertainments Act, 1932. We assume that the prescribed percentage of five *per cent.* of £X only is collected by the clerk to the justices and paid to the cinematograph fund, and that A is responsible for the payment to the charities concerned and must produce evidence of such payments when required by the justices.

If you have any precedent of a licence under the Sunday Entertainments Act, 1932, would you kindly supply us with a copy. We can find no form in *Paterson* 58th edn.

NENE.

Answer.

The Sunday Entertainments Act, 1932, does not prescribe the method to be used for paying the amounts specified in s. 1 (1) (*b*) of the Act. The method is usually decided by the licensing authority and laid down in the conditions endorsed on the licence. The method suggested by our correspondent is quite unobjectionable.

A precedent for a licence is to be found in *Oke's Magisterial Formulist*, 13th edn., at p. 965; the conditions set out in this form are, of course "model" only and will require to be adapted to correspond with the conditions imposed by the licensing authority when the licence was granted.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

RIVER TRENT CATCHMENT BOARD

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of Legal Assistant (Unadmitted) at a salary in accordance with Grade V of the A.P.T. Division of the National Scales (£520 to £570). Local government experience is not essential, but applicants must be able to carry through conveyancing and allied transactions under supervision and should have had experience in general legal work including County Court practice. The appointment will be subject to one month's notice on either side and to the Local Government Superannuation Act, 1937.

Applications, containing information as to age, experience, etc., accompanied by copies of two testimonials, should be sent to the undersigned, not later than Saturday, December 9, 1950.

JOHN HIRST,
Solicitor and Clerk of the Board.

Catchment Board Office,
Derby Road,
Nottingham.

LANCASHIRE No. 9 COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment, the area comprising the Manchester county petty sessional division, and the borough of Eccles.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of serving officers.

The appointment will be subject to the Probation Rules, 1949, the salary being in accordance with the prescribed scale, and the successful applicant will be required to undergo a medical examination. The ability to drive a motor car will be an advantage.

Applications with the names of two persons to whom reference can be made should be sent to the undersigned not later than December 14, next.

G. S. GREEN,
Clerk to the Probation Committee.

County Magistrates' Court,
Strangeways,
Manchester 3.

COUNTY OF DERBY

Appointment of Assistant Solicitor

APPLICATIONS are invited from solicitors with experience in local government for the appointment of Assistant Solicitor in the office of the Clerk of the Derbyshire County Council at a salary in accordance with A.P.T. Grade VII (£635×£25—£710 per annum). The appointment is within the superannuation scheme and subject to medical examination. Candidates should be able to undertake advocacy and the legal work of land acquisition and to assist generally in the legal and administrative work of the department.

Applications, to be made on form to be obtained from the undersigned, and to be accompanied by two testimonials. Closing date Wednesday, December 13, 1950.

H. WILFRID SKINNER,
Clerk of the Council.

County Offices,
St. Mary's Gate,
Derby.

CITY AND COUNTY OF KINGSTON-UPON-HULL

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 nor more than 40 years of age except in the case of a serving full-time Probation Officer. The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such Rules and subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications, stating age and qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than Friday, December 15, 1950.

T. A. DOUBLEDAY,
Secretary to the Probation Committee.

The Law Courts,
Hull.

BERKSHIRE COUNTY COUNCIL

APPLICATIONS are invited for post of Children's Welfare Officer (male). Salary A.P.T. II (£420 to £465). The officer will be required to undertake responsibility with regard to adoption and other court work and supervision of senior boys. He should possess suitable qualifications and experience and be able to drive a car. Applications, together with the names of three referees, should be sent to Children's Officer, 35, Bath Road, Reading, not later than December 20, 1950. H. J. C. Neobard, Clerk of the Council.

CITY AND COUNTY OF BRISTOL

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer for the City and County of Bristol.

The appointment and salary will be in accordance with the Probation Rules, 1949, and the successful applicant will be required to pass a medical examination.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving Probation Officers or persons who are otherwise qualified for appointment under the Probation Rules.

Applications, stating age, experience and qualifications, together with copies of not more than three recent testimonials, must be sent to reach the undersigned not later than Tuesday, December 12, 1950. Envelopes should be endorsed "Appointment of Male Probation Officer."

A. J. A. ORME,
Clerk to the Justices.

Petty Sessional Court House,
Bristol, 1.

INQUIRIES

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